

Q. What is the measure of debt discount and expense or net premium? A. The measure is the difference between net proceeds to the company and the obligation at maturity of the fixed term contract.

Q. When an outstanding issue of bonds is refinanced is unamortized discount and expense related to that issue an unavoidable cost?

MR. GOLDBERG: May I have that question, please?

(Question read.)

MR. GOLDBERG: Is "that issue" the issue which is refunded or the new issue?

[7448] MR. SPARKS: The issue which is retired.

THE WITNESS: It is.

By MR. SPARKS:

Q. Must such costs be borne by someone, Doctor? A. They must be.

Q. What are the alternatives of treatment of these costs available to the Regulatory Commission for rate making purposes? A. Three alternative treatments of such costs of financing are available: First, these costs might be provided for among the operating expenses. This is an inappropriate alternative since they are not operating expenses.

Second, they may be recognized as part of the determined experienced cost of capital and accepted as evidence of the fair rate of return.

Third, such costs may be excluded from the determination of capital costs as well as the operating expenses.

Under this third alternative such costs absorb a part of what would otherwise be equity return. This third method imposes on the equity investment an additional hazard, the hazard of obsolescence of contracts for senior capital. Such an additional hazard, when recognized as such by investors, will become reflected in increased return requirements and subject to recognition in the allowance

for risk taking in determination of the fair rate of return. [7449] Q. Why do you say that under this third alternative such costs absorb a part of what would otherwise be equity return? A. I mean that such costs can not be avoided by the choice of accounting disposition. Expedited accounting disposition by write-off to surplus or by rapid amortization by charges against income conforms to the practice of conservatism in accounting. It represents an immediate or rapid absorption of the cost by the equity in exchange for the prospect of a corresponding increase in net income during future accounting periods. Disallowance as fair rates of return evidence on the ground that the cost has been written off to surplus has a double-barreled effect on computations such as are shown by Schedule 6 of Exhibit 29.

The cost of debt capital component of the over-all cost rate is reduced on the ground that the particular costs have been absorbed by the equity. The equity capital cost rate, however, is weighted by the proportion of equity capital in the total capitalization and that proportion is reduced by a write-off of such costs to surplus. Therefore the equity capital component of the over-all cost rate computed in the manner shown by Schedule 6 does not include any allowance to reflect the absorption of such cost by the equity.

Q. Are such costs subject to exclusion on the ground that they are imprudently incurred? [7450] A. I know of no evidence—

MR. GOLDBERG: Mr. Examiner, I must object to that. It seems to me it asks for a legal conclusion.

TRIAL EXAMINER: Objection is overruled.

THE WITNESS: I know of no evidence which suggests that such costs were imprudently incurred.

MR. GOLDBERG: Now may I have the question and the answer, please?

(Question and answer read.)

MR. GOLDBERG: I realize you have just indicated, Dr. Foster, that does not complete your answer, but

the answer you have already given raises in my mind the question that I would like to have counsel advise me on, and that is when he says "such costs" in his question is he referring his question specifically to costs that Penn Water has incurred or is it just a general question dealing with unamortized debt discount?

MR. SPARKS: We are talking about the costs Dr. Foster has reflected in his exhibits in this case.

MR. GOLDBERG: It is related, then, to Penn Water?

MR. SPARKS: Yes.

MR. GOLDBERG: All right.

THE WITNESS: In the words of Mr. Justice Brandeis the criterion of "Prudent" is applied "for the purpose of excluding what might be found to be dishonest or obviously [7451] wasteful" costs. The criterion should not be extended to exclude what may be found in the light of hindsight to be merely uneconomic. Such a criterion of exclusion on the ground that conditions have changed since the time when the costs were incurred would require, for example, that equity investors be penalized by disallowance of depreciation expense reflecting growing obsolescence.

By MR. SPARKS:

Q. Doctor, at Page 6054, lines 7 to 10 of the transcript the following question was asked:

"Assume that bonds are retired by using funds secured through the issuance of preferred stock. Is the unamortized discount and expense associated with the bonds a cost of the preferred stock?" You answered in the negative.

In the circumstance described is the unamortized debt discount and expense a cost of capital? A. Yes.

Q. Why? A. The character of the unamortized debt discount and expense as a cost of capital is not changed by the fact of the retirement of the bonds by use of proceeds from an issue of preferred stock instead of refunding bonds. Such unamortized costs are appropriately charged to sur-

plus at the time of the transaction, but their status as unavoidable costs is not changed by the accounting [7452] disposition, and they are appropriately recoverable by an allowance in the equity component of the rate of return.

The appropriate treatment of capital costs in the circumstance of substitution of preferred for debt capital is generally the same as where equity capital is substituted for debt capital.

In the case of Penn Water, equity capital was substituted for debt to the extent of \$345,800 in the refinancing of the 5½ per cent series "A" and the six per cent Holtwood bonds by the 4½ per cent series "B" bonds issued in March, 1928. This is the difference between amounts shown by lines 16 and 17 of Schedule 4 of Exhibit 29.

The related unamortized debt discount and expense, which amounted to \$38,700, the difference between the amounts shown by lines 15 and 19 of Schedule 4, was dropped from the computation of experienced cost of debt capital. That circumstance and the treatment for the purpose of Schedule 4 do not cause the item to cease to exist as a cost of capital. The item was not recognized in the determination of equity capital costs because it was relatively insignificant in amount. Its recognition as a cost assumed by the equity would have required surplus be adjusted to the extent of the amount involved for the purpose of the computation of the equity cost component shown by Schedule 6.

Q. Are the hypothetical replacement cost of capital [7453] rates shown by Schedule 10 of Exhibit 30 appropriate measures or evidence of the fair rate of return to Penn Water to be applied to an original cost rate basis?

A. No.

Q. Why? A. Such replacement cost rates of 4.9 per cent, or 5.6 per cent, are not appropriate measures or evidence of a fair rate of return to be applied to an original cost rate base when its applicability is tested by either the equitable or the economic standards.

Q. During the course of your cross-examination Mr. Goldberg drew your attention to certain portions of the Federal Communications Commission rate of return study issued June 15, 1938. May I direct your attention to Page 20 of Chapter 2 of that study and to these statements:

"The price paid for capital, like many of the other costs which must be incurred to provide service, is largely determined by the forces of competition. Materials and supplies, and to some extent labor, as well as the funds necessary in the business must be secured in competitive markets. Regulation must provide the utility with sufficient revenues to enable it to purchase its materials, supplies and labor in competition with other businesses, and to the same end regulation must provide a return that will meet the demand of the capital market. If such return is not made [7454] available, capital funds will not be forthcoming.

"From this point of view, the primary purpose of permitting a utility to earn a 'return' is to enable it to pay the costs of its capital, and the amount of these costs should be the reasonable and proper measure of the return allowance."

I have skipped Note 1 and I shall read Note 2 at the bottom of Page 20.

"The necessary and useful distinction between 'expense' and 'economic cost', should be kept in mind. 'Expense' is an accounting term, and excludes many items properly considered as a part of 'economic cost.' The return may be an expense only in part or even not at all during a given accounting period."

Will you examine the portions which I have read, Doctor, and state whether or not you agree with those statements? A. I do agree with those statements.

Q. May I also direct your attention to Page 76 of Chapter 5 of the study which I have referred to in my previous question, and to these statements:

"While it is true that the prospects of a future rise or fall in the market price of stocks have their influence (and at times may even be controlling), it is believed that the financial and operating characteristics of the particular utility dominate the investing public's evaluation of [7455] its securities. In many cases this will not result unless the period used is long enough to even out the effect of market factors extraneous to the individual corporation's situation. In any event, however, it seems to be generally conceded that the long run average earnings-price ratio, more accurately than any other single factor, reflects the investor's composite evaluation of all fundamental influences affecting the corporation."

Do you agree with those statements as statements of the appropriate use of earnings-price ratios in the determination of the fair value of return? A. I do.

[7456] Q. At page 5691 of the transcript you gave certain answers to questions asked by Mr. Goldberg. Were the statements made by you on page 5691, lines 13 to 16, both inclusive, and lines 22 and 23 in any way inconsistent with the method which you used in this proceeding in arriving at the fair return of not less than \$2,450,000 and the fair rate of return of not less than 6½%? A. They were not.

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[7458] **RE-CROSS-EXAMINATION.**

By MR. GOLDBERG:

Q. Referring to Exhibit 165, Dr. Foster, in presenting that exhibit are we to understand that you are undertaking to support a specific treatment of depreciation in this case? A. No, you are not to so understand.

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[7461] Q. What I am trying to find out is have you ever known of the use of depreciation expenses in rate making based upon the straight-line method of depreciation in as-

sociation with an undepreciated rate base? A. In a rate proceeding I cannot say that I have.

Q. In other words, depending upon your assumptions you can alter those results in Exhibit 165. Right? A. That is right. The only purpose of this exhibit was to attempt to supply an answer with respect to the meaning of the conclusion reached in the rate of return testimony. [7462] That is, there were numerous questions with respect to the meaning of the statement that the conclusion was prior to whatever might be the effect of the treatment of depreciation. In that connection it was said that the fair rate of return would not vary.

It was said also that the fair return defined as the amount reached by applying the rate of return to the rate base, depreciated or undepreciated depending upon the method, would vary.

This exhibit is intended to be no more than a mathematical illustration of what was meant in that connection.

[7466]

DONALD GUNN.

CROSS-EXAMINATION (Continued).

[7469] By MR. HALL:

Q. Did you ask Mr. Hutchinson what risk he had assumed and what sacrifices he had made in subscribing to the McCail Ferry bonds? A. No, I don't believe I asked him that question. I didn't consider Mr. Hutchinson a financial expert as such.

[7470] Q. When did actual physical construction of the Holtwood project begin? A. The latter part of October 1905.

Q. October 24, 1905, is the exact date according to my information. A. Yes.

Q. At that time clearing of the reservoir began; right? A. I believe it was clearing of the reservoir and particularly clearing of a site for the construction site and construction labor camp.

Q. What source of income did McCall Ferry Power Company have in the spring of 1905?

MR. KING: May I inquire in what sense you refer to income?

MR. HALL: Income from operations.

THE WITNESS: None.

By MR. HALL:

Q. Or from any other source. A. The thing that is troubling me is this: I believe they did get some interest on bank deposits. I don't know whether or not you would call that income.

MR. KING: That is why I asked you the question.

By MR. HALL:

Q. Any other income? [7471] A. Well, they had a little income from operation of the construction camp.

Q. Very insignificant amount? A. Insignificant, yes.

Q. Had McCall Ferry consummated any power contracts for the sale of its project's output in the spring of 1905? A. They had not consummated any contracts as I recall it. Previous to that time there had been power surveys made of the potential market, and a market was known to be available, but no actual contracts had been consummated.

[7472] Q. No actual negotiations had begun in the spring of 1905. Is that right? A. That I don't know.

Q. Wasn't the first contract for power signed in March of 1907? A. I believe that is correct.

Q. When was work stopped on the project due to the exhaustion of available funds? A. About January, 1909. At that time construction practically came to a standstill. Previous to that time it had gone to a rather low ebb, during the months of February and March, 1908, but immediately following that there was a resumption of construction, and then the actual halting of work took place in January of 1909.

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Q. The capacity and power output of the project had not been finally determined in the spring of 1905, right?

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THE WITNESS: Well, in the Spring of 1905 a capacity for the initial project had been decided upon which was substantially the same as the initial project actually installed. However, the plans for the project in the spring [7473] of 1905 called for a lower dam and a greater number of units without tailrace excavation, and the project as finally installed called for a higher dam, a fewer number of units, and tailrace improvement which increased the power from those units, so that at the end the initial project in each case was of substantially the same horsepower.

By MR. HALL:

Q. Wasn't the initial estimate based upon 50,000 horsepower? A. Yes.

Q. And that was increased to 100,000 a little later? A. There was a whole series of estimates which entered into the studies upon which the final plant was based. I don't recall what all the different horsepowers were, but the initial plant as actually installed consisted of five units, and they aggregated substantially 50,000 horsepower.

Q. When were bids called for on the dam of 185 foot elevation? A. On August 11, 1905.

Q. When was the final decision reached to construct the dam at 165 foot elevation? A. June 19, 1906. But previously, in the original financing in June, they had been

considering a dam at 155 foot elevation, which is still lower than the 165 and much [7474] lower than the 185.

Q. At the same time they were also turning over in their minds the 185 foot elevation, right? A. I don't know that they were. The 155 foot elevation first came into the picture in a substantial way in the Parsons Report on January 13, 1905. It was incorporated in the Fisk underwriting agreement and prospectus in March 25, 1905, and it appeared to be the prevailing plan, that is the plan to build to 155, down through the time the financing was completed.

Q. That financing was completed in May of 1905, right? A. The subscriptions were taken, I think, in March of 1905. The actual availability of money came about in June, I believe, or about the middle of June.

Now, apparently, the first variation or first serious consideration that was given to building a dam higher than elevation 155 was about June of 1905, and came about as a result of negotiation with Pennsylvania Railroad officials for raising the railroad. At that time the railroad company estimated that the railroad could be raised to Pennsylvania Railroad's satisfaction at a cost of about \$577,500.

As soon as that estimate was made known to McCall Ferry Power Company, and the estimate was made by Pennsylvania Railroad, the advisory board of engineers immediately considered building a higher dam because that estimate of [7475] \$577,000 was much less than they thought it would cost to raise the railroad track.

During the early part of August the advisory board recommended the construction of the dam to elevation 185, and on August 11 bids were called for for a construction of a dam to elevation 185. Then the bidders included in their bids up to \$500,000 or \$750,000 for risks of constructing the project in the Susquehanna River, that is risks from flood and also against the results of a penalty clause which McCall Ferry had included for completion. When McCall Ferry Power Company considered those bids they

came to the conclusion that if they accepted one of them they were accepting the worst contingency, and, therefore, the highest price that they could possibly be caused in the construction of the dam, and had no opportunity to have any advantage from the advantageous river flow conditions prevailing, and on the basis of that they rejected those bids and made an arrangement with Hugh L. Cooper, who at that time had a construction organization working on the hydro developments of Niagara Falls which were about complete, made an arrangement with him to construct the project at cost plus a stipulated fee, and signed the contract with him to that effect for a dam at 185. They also had a provision for building a dam at a lower elevation.

At about that time, or about December 6, 1905, Pennsylvania [7476] Railroad revised the estimate on the cost to relocate the railroad upward from \$577,000 to \$1,237,000, and certain landowners whose property would have to be bought in the relocation of the railroad, and also in the flooding at a higher elevation, made such exorbitant claims for the price of their land that McCall Ferry Power Company decided that they couldn't afford to build a project to elevation 185, and as a result on June 19, 1906, they settled upon the elevation for the dam at 165.

Q. From what you said, all the estimates of revenues in the Spring of 1905 were not final. Is that right? A. That is correct, none of the estimates were anything, as later events proved.

[7481] Q. Will you refer to Exhibit 159, Mr. Gunn? A. Yes, sir, I have it before me.

Q. Doesn't Mr. Dimock state in this exhibit that the [7482] contract which has been consummated is at \$21.50 per horsepower? A. That is one of the things he states. I might suggest that has to be taken along with this fact: I believe the early expectations of McCall Ferry were to sell a certain category of their power to Consolidated Company in Baltimore, another category of it to United Railways. That is, that was their first expectation.

Later their plans changed to sell what may have been, and I believe was necessary, a different category of power to Consolidated, also a different category of power to United Railways, and to bring a third customer into the picture, that being the Lancaster Edison Company, as I believe it was known at that time.

What hydroelectric power is worth is determined wholly by the specifications for its use and delivery which are contained in the power contract, so it does not seem to me there is necessarily any inconsistency at all between the \$21.50 Mr. Dimock mentioned to Mr. Higginson in Exhibit 159 and the figures stated on pages 45 and 46 of Exhibit 27.

I have not made a study and a comparison of those contracts, and I therefore am not in a position to state that as a fact other than just the general statements I have given you.

Q. Notwithstanding the absence of earnings in the [7483] Spring of 1905, the absence of contracts to insure any earnings in the future, the absence of any definitive arrangements for the construction of the project, you nevertheless contend that the McCall Ferry stock had a cash value at the time of the transaction in the Spring of 1905. Right! A. May I have that question, please?

(Question read.)

THE WITNESS: When you speak of a "definitive arrangement for the construction" to what are you referring? The absence of a contract executed with a contractor for building the project? Is that what you are referring to?

[7484] By MR. HALL:

Q. That plus the fact no definite plans had been agreed upon as indicated by the fact they went from a 155 elevation to a 185 elevation and back to a 165 elevation?

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THE WITNESS: Yes, in my opinion the stock had a value. However, while the stock did not have actual earn-

ings then it had prospective earnings. It is also true there were no actual contracts then, which was normally to be expected. There was, however, available a market which had been thoroughly surveyed.

It is also true that there was no definitive plan for the project. However, there were plans which were perfectly practicable, and it is true that later several other plans were considered and rejected, and the final plan accepted was [7485] somewhat different from the original plan.

Q. Upon what contract were the prospective earnings that you referred to based? A. They had no actual contract. It was on the existence of an obvious market. That is what the prospective earnings were based upon.

Q. They thought that in the spring of 1905 they could get contracts for the output in the future. That is what you are saying? A. I think they knew that.

Q. How do you know that, Mr. Gunn? A. For the reason the markets were within practical transmission distance and they knew they could sell power against steam competition, and nothing short of an improvident management would fail to buy it under those circumstances, that is improvident management on the part of their customers.

Q. The McCall Ferry did not know the price at which they could or would sell the power output of the project? A. No, that lying in the future they could only estimate the price, which they did.

Q. And the estimates to which you refer were in excess of the contracts actually consummated; right? A. I wouldn't draw that conclusion. I have not made a study of them and I don't think we have anything before us now to support such a conclusion.

[7486] Q. Isn't that what Mr. Dimock says in his letter which is Exhibit No. 159? A. What part of that letter?

Q. In referring to \$21.50 per horsepower? A. No, that doesn't necessarily follow for the reason I have already explained to you.

Q. Had Hutchinson always entertained the opinion shown in his affidavit as to the value of the stock? A. I don't know. I never knew Mr. Hutchinson before I met him about eighteen months. I think, prior to the date of that statement.

Q. He, like others you consulted, knew that you wanted the valuation for the purpose of supporting Penn Water's original cost claim, didn't he? A. Yes, for that purpose and any other purpose we might need it for. At least they could draw that as an inference or conclusion.

Q. Assuming he didn't know it, he could draw that conclusion, also. Isn't that right? A. Yes; surely. I believe I told him that was the purpose of it.

Q. And he could also draw the conclusion that it would be of no help for you if he said the stock had no cash value at the time of the transaction. Isn't that so?

[7487] THE WITNESS: He could draw that conclusion, Mr. Hall, but there was every reason to expect that he would not act upon such a conclusion. Dr. Hutchinson felt all his life he had been mistreated very badly in the McCah Ferry project, and, as a matter of fact, there was a considerable amount of hesitancy in our company to even approach him and ask him for his help in this.

Q. At this point, Mr. Gunn, I would like to refer you to part 1 of Exhibit 27, and particularly to page 4 thereof. A. Yes, sir.

Q. Does not Hutchinson state there that when it was [7488] determined the financing was more than Bertron, Storrs and Griscom could complete then Harvey Fisk and Sons were approached in connection with the proposed financing of the project?

THE WITNESS: Yes, sir, it so states.

By MR. HALL:

Q. Hutchinson there states that Fisk agreed to form a new syndicate and undertake to complete the financing. Isn't that so? A. That is correct. It so states.

Q. But according to Hutchinson's statement the Fisk firm insisted as consideration for its efforts a majority of the common stock of McCall Ferry. Is that right? A. It so states.

Q. According to Hutchinson, Harvey Fisk and Sons demanded [7489] that consideration to save the financing. Right? A. That is correct.

Q. Isn't it a fact that Hutchinson in no place in his affidavit states that Harvey Fisk and Sons rendered any services other than financing?

THE WITNESS: I will have to read the affidavit if you wish me to answer that question.

By MR. HALL:

Q. Do you recall that Hutchinson stated that the Fisk firm rendered any services other than financing services? A. I believe Hutchinson stated somewhere in his affidavit that Fisk deprived him of control of the enterprise, and that is the statement I will have to look for.

Q. Is it upon that statement that you would conclude that the Fisk firm rendered services other than financing? A. Well, that certainly would be one statement which would indicate they took the project over lock, stock and [7490] barrel, control, financing, management, and whatever else which went with domination of it.

Q. Do you recall any direct statement which Hutchinson made that the Fisk firm rendered services other than financing? A. I don't recall that Hutchinson attempted to enumerate the services which Fisk did render. I don't think he was either in a position or was asked to make such an enumeration, but it seems to me that all of Hutchinson's statement relating to Fisk, and Fisk taking the control, indicates that he did more than simply financing.

Q. Wasn't Hutchinson in a position to state who was managing the project? A. Yes, I think he was in a position to state it. My interpretation of his affidavit, and certainly of my considerations with him, was that Fisk did it and not him, as he had hoped to do.

The reason I can't answer specifically without reading the affidavit is that I can't be sure what I am remembering of what Hutchinson told me as separate from what may be stated in this affidavit.

Q. But nowhere in part 1 of Exhibit 27 does Hutchinson make any direct statement that the Fisk firm rendered services other than financing? A. That I don't know without reading the exhibit.

Q. All right. [7491] A. I haven't read the exhibit for a considerable length of time.

Q. When at the bottom of page 6 of Exhibit 27, Mr. Hutchinson refers to the ultimate consideration to affiant, what was his immediate consideration?

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**THE WITNESS:** In that statement, Mr. Hutchinson was distinguishing between the amount of the consideration which passed to him under his agreement with Susquehanna Contracting Company and the part of that consideration which he was able to keep beneficially for himself and the people who had assisted him in developing the project to the stage it was developed when he turned it over to Susquehanna Contracting Company.

By MR. HALL:

Q. Why didn't you obtain from Hutchinson the details of the process by which he distributed, if he did, a portion of the common stock and the four thousand shares of preferred stock which constituted part of the consideration under the contract which is part 19 of Exhibit 27?

[7492] **THE WITNESS:** It seems to me that Part 1 of Exhibit 27 does state the details. It states that the bankers

would receive thirty thousand shares, that he was to receive 18,840, and that he was to receive the \$750,000 cash. It seems to me that disposes of the whole of the consideration mentioned in part 19 of Exhibit 27.

By Mr. HALL:

Q. Mr. Hutchinson, according to your testimony, refers to the total consideration involved in part 19 of Exhibit 27? A. Yes, sir.

Q. But he does not describe in detail the terms of any agreement or relate the exact process by which he turned over or distributed a portion of the common stock and the preferred stock which he received under the Susquehanna contract. Isn't that so?

THE WITNESS: It seems to me that he relates it in sufficient detail. I don't know what you mean by exact detail. He states in the affidavit, and I believe it was a fact from my attempts with him to locate his records, that he [7493] didn't have the records of that. However, he does state that he received 18,840 shares of the common stock, that the bankers received 30,000 shares of the common stock, and that accounts for all of the common stock.

By Mr. HALL:

Q. How were the 30,000 shares of stock distributed between the bankers? A. Hutchinson doesn't say, and I don't know whether he ever knew or not. I rather doubt he did.

Q. Mr. Gunn, would an investor be concerned with the adequacy of the proposed financing of the project? A. I think he should be, and I am very certain the investors in McCall Ferry wish they had been more concerned with it.

Q. Don't you think that would have a bearing on the cash value of the stock? A. Yes, I think it might. If at the time you were valuing the stock they knew that the financing was adequate it would have one effect. If they

knew it was inadequate I imagine it would have another effect. The mere fact their expectations at one time proved wrong at a later date wouldn't have any effect on the stock at a previous date.

Q. Mr. Gunn, have you ever found any evidence to indicate that the sale of common or preferred for cash in 1905 was believed possible or ever considered by McCall Ferry? [7494] A. I never have found any evidence either way. I have always believed that because the stock obviously had some value then that if an effort had been made to sell it it could have been sold.

Q. Do you know of any effort which was made? A. No, sir. On the contrary I don't believe any effort ever was made to sell it. I think the people who held it thought it was a good investment and wanted to keep it.

Q. How do you know that those who held the stock didn't want to sell it? A. Because I never found a scrap of evidence anywhere in the record of their attempting to sell it. If they wanted to sell it I assume they would have tried to sell it.

Q. That means they couldn't sell it. Isn't that so? A. No; I don't think so.

Q. Why not? A. It just doesn't to me.

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Q. Do you know of any sales of McCall Ferry common [7495] or preferred stock for cash in the spring of 1905?

THE WITNESS: No.

By MR. HALL:

Q. Do you know of any— A. Unless you want to, and perhaps it would be proper, to say that the acceptance of the stock by Hutchinson in exchange for his property was a sale. But I don't know of any market transaction in that.

Q. Do you have any record of any cash offer ever having been made for the McCall Ferry common and preferred stock?

[7496] THE WITNESS: You mean common or preferred.

By MR. HALL:

Q. Both. A. Nothing except the transaction between Bertron; Griscom Company and Pullen which related to purchase of 150 shares by Bertron, Storrs and Griscom from Pullen.

Q. Isn't it a fact that the initial syndicate found it difficult to sell even bonds and had to call in other bankers? A. I don't understand the question. My difficulty relates to who was the original syndicate.

Q. I am referring now to those involved in the March 1, 1905, plan? A. And I take that to mean Bertron, Storrs and Griscom, and Dimock and Barney.

Q. Lee, Higginson and Company. A. I thought they were the bankers you were referring to as having been called in.

Q. You are right.

THE WITNESS: All right. Now may I have the question?

[7497] (Question read.)

THE WITNESS: The original syndicate as we have defined it did call in other bankers. Whether that was because of the difficulty or indicated the difficulty of selling bonds, I don't know.

By MR. HALL:

Q. At any rate the initial syndicate under the March 1, 1905, plan, procured approximately subscriptions for four million dollars principal amount of bonds. Is that right? A. About that. My difficulty in answering the question relates, for example, to this fact: The Safe Harbor refinancing bonds were sold the other day, and they

sold for a very big premium. The First Boston Corporation was the successful bidder and they brought someone else with them. I don't know whether they brought them in because it was difficult to sell the Safe Harbor bonds or for some other reason. I have the same difficulty in answering your previous question.

[7498] By MR. HALL:

Q. Isn't it a fact that in the McCall Ferry reorganization of 1909 no value was allowed for the preferred and common stock of McCall Ferry? A. I have some difficulty with that. Perhaps I can answer it this way: It is a fact that in the reorganization the equity represented by the common and preferred stock was eliminated from the McCall Ferry Project.

Q. In other words, the common and preferred stock were wiped out completely in the reorganization process?

[7499] A. Yes.

[7501] Q. Mr. Gunn, what cash value did McCall Ferry report for its capital stock to the state of Pennsylvania for the year 1905?

THE WITNESS: I don't know.

By MR. HALL:

Q. I show you at this time a photostatic copy of an excerpt from that report for the year 1905 which is dated July 13, 1906, and ask you if it is not a fact that the McCall Ferry representatives state that the stock had no cash value in 1905 and has had none since that time?

[7502] THE WITNESS: No, it doesn't seem to me that is what this letter states. It seems to me the letter states simply, at the beginning of the second paragraph, and particularly the final paragraph, after reciting all of the facts concerning the stock, "In view of what has been said the under-

signed have found themselves entirely unable to make any estimate and appraisal of the capital stock of said company for the purposes of taxation at the present time."

It just says they couldn't determine it.

By MR. HALL:

Q. Doesn't the second sentence in the second paragraph read,

"In the first place the stock did not have at that time," referring to 1905, "—nor has it had since, any market value, there having been no sales thereof according to [7503] our information and belief." A. That is correct. It seems to me there have not been sales and therefore from sales they could not determine the market value. Besides, this letter was talking about a valuation for taxation under Pennsylvania law. I have no idea as to what that legal requirement might be.

Q. Isn't it a fact they had that difficulty only six months after 1905? A. Yes, sir, I think it is. But, again, I don't even see the word "cash value" in the whole of this letter.

Q. Where is it mentioned in Hutchinson's affidavit? A. I don't remember whether it is in there or not.

Q. You know it to be a fact it is not in any of the affidavits? A. No, I don't know it to be a fact, but I don't recall it specifically having been called cash value. However, this is obviously a valuation for taxation purposes under Pennsylvania law. I don't know what may be the requirements of the Pennsylvania law for taxation. They might stipulate specific measure of value for taxation under Pennsylvania law for all I know.

Q. The difficulty of that was experienced only six months after 1905, isn't that so? A. That is what the letter would indicate. But it doesn't indicate the stock had no value to me.

[7504] Q. At that time they were closer to the facts than anyone 34 years after the event would be. Isn't that right? A. No doubt. They proved that.

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(The document referred to was marked for Identification as Exhibit number 168.)

[7505] **MR. HALL:** Mr. Examiner, may we have marked for Identification as Exhibit 169 a photostatic copy of an excerpt from the capital stock report of McCall Ferry Power Company for the year 1906, which is dated January 31, 1907?

(Thereupon, the document referred to was marked Exhibit No. 169 for Identification.)

By **MR. HALL:**

Q. Mr. Gunn, do not the representatives of McCall Ferry Power Company make the same, or substantially the same representations in their report submitted in 1907 for the year 1906—by that I mean—they state that the McCall stock had [7506] no market value in 1906 and has had none since that time?

**THE WITNESS:** Yes, they make substantially the same representations as I have been able to determine from a rough comparison, it being, "In the first place, the stock did not have, at that time, nor has it had since, any market value, there having been no sales thereof, according to our information and belief."

By **MR. HALL:**

Q. And don't they say that no price or value is indicated or measured by net earnings or by the amount of profits made either declared in dividends or carried into surplus or sinking fund? A. Yes, they say that, Mr. Hall. Those latter words, beginning with "Indicated" and ending with "fund" is in quotes as though that were one of the stipulated measures of the Pennsylvania taxation law.

It is obvious they could not have had earnings during any of those years because the project was under construc-

tion, and it would appear from that that the Pennsylvania taxation laws provides only for the taxation of enterprises that have been completed and in operation.

Q. Do you know that to be a fact? [7507] A. No, but if our supposition that that quotation is from the Pennsylvania law is correct, then it would seem to me that would be the conclusion.

Q. Do you know whether or not McCall Ferry actually paid a tax? A. No, I don't know. It is a fact which could be ascertained, I suppose.

Q. Mr. Gunn, are we to understand that in reaching your conclusion as to the cash value of the McCall Ferry stock you did not consider exhibits numbered 168 and 169 for identification? A. I didn't consider them material evidence, no, and for the reason primarily stated in the last paragraph of each of those exhibits, which indicates definitely that the only thing the representatives of McCall Ferry Power Company were there stating was that they found themselves entirely unable to make any estimate and appraisal of the capital stock of McCall Ferry Power Company for the purposes of taxation at the present time. That doesn't indicate to me at all it might not have had a value for other purposes.

It just indicates they couldn't estimate how much the value was for taxation purposes.

Q. Did you, in making your study, consider exhibits numbered 168 and 169, and reject them? A. I don't follow just what you mean by rejecting [7508] them.

I considered them for what they were worth. I recall having looked at these tax returns.

Q. Did you reach the conclusion they were entitled to no consideration in arriving at the cash value of McCall Ferry stock? A. No, I don't think so. I would say that I reached the conclusion, because of the last paragraph, that they indicated the stock did have a value, McCall Ferry Power Company just couldn't estimate the form of value that the Pennsylvania tax law required them to estimate, or

perhaps in the way that the Pennsylvania tax law required them to estimate it.

Q. In other words, you believed that exhibits numbered 168 and 169 should have been weighed and considered? A. Should have been given some consideration, yes.

Q. Were Exhibits 168 and 169 submitted to Hutchinson, Lee, Fisk and Hopkins for the purpose of making their affidavits? A. I doubt it very much. I don't think it was necessary to submit them to any of them.

Q. In other words, you decided that for them. A. That they shouldn't be submitted?

Q. Yes. A. I suppose I did. I can't say that Hutchinson's and [7509] Fisk's lawyer may not have been shown this; but all I am saying is that as I recall this was not included among the exhibits finally submitted to them.

Q. By whom would exhibits 168 and 169 be shown to Fisk's lawyer and Hutchinson? A. By myself or Mr. Eichhorn or Mr. Chase.

Q. Do you recall showing these two exhibits to those people? A. I don't recall whether or not I did.

I showed those two parties a considerable volume of evidence, and I have no record of the total amount of it. I do have a record of the more important items of evidence which I have showed them in the end, and included in the participation which was made up for their final consideration.

Q. Do you recall whether Mr. Eichhorn and Mr. Chase showed Mr. Cole and Mr. Hutchinson exhibits numbered 168 and 169 for identification for their consideration? A. No, I don't recall whether they did or not.

Q. Mr. Gunn, didn't representatives of McCall Ferry make the same representations to the State auditor general of Pennsylvania for the years 1907, 1908, 1909, as they did in the years 1905 and 1906, as reflected in exhibits numbered 168 and 169? A. I don't know. I don't recall. They may have.

[7510] By MR. HALL:

Q. Mr. Gunn, notwithstanding the report of the officers of McCall Ferry, you know, do you not, that the Auditor General and the Treasurer for the State of Pennsylvania nevertheless placed a value of one million dollars on the total preferred and common stock? A. I can't say that I recall that.

Q. Do you recall whether or not the company took an appeal to the Courts? A. I recall that there was some tax litigation, but I don't recall the details.

Q. Don't you recall that the Court involved was the Court of Common Pleas of Dauphin County?

\* \* \*

[7511] THE WITNESS: I imagine that is where the litigation would have been taken but I don't specifically recall it.

By MR. HALL:

Q. What valuation finally was established as a result of the appeal to the Court? A. I don't recall.

Q. Would it help you if I said the valuation was reduced to \$20,000? A. If that is the fact I will accept it. It doesn't help my recollection any, though.

\* \* \*

[7513] By MR. HALL:

Q. Mr. Gunn, will you assume that twenty thousand dollars is to be spread equally over 4,116,500 dollars par value preferred and five million par value of common stock outstanding? What total does that give you per share? A. Let me see if I understand your question.

You are asking me to assume that 4,116,000 par value of stock, plus five million dollars common stock is to be divided into \$20,000. Is that your question? And how much that will be per share as a result of that arithmetical operation?

Q. That is right. A. What was it?

Q. 21 cents. A. It appears that if the total par value of McCall Ferry stock, both common and preferred, which is 9,116,000 dollars, is divided into—

Q. Number of shares represented by the par value? A. —twenty thousand dollars, then the results of that division would be 21 cents.

Q. Per share. A. Yes, 21 cents per share. I don't know what significance it would have, however.

Q. And if we were to assign to the preferred stock two times the amount we assigned to the common it would mean [7514] fourteen cents per share for the preferred and seven cents per share for the common. Right? A. Yes, I believe that that would be the result of allocating the 21 cents previously derived on the basis you have just stated.

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**TRIAL EXAMINER:** Counsel is proceeding on the basis of an assumption. There is nothing to indicate the Court found it was twenty thousand dollars.

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[7517] **MR. HALL:** Just one moment, Mr. Examiner, please.

Mr. Examiner, we have a letter dated June 10, 1907, copied from McCall Ferry Power Company file No. 13, signed by Olmstead and Stamm, to Messrs. Simpson, Thacher and Bartlett, and it appears that Olmstead and Stamm are lawyers located at 5 North Third Street, Harrisburg, Pennsylvania.

[7518] In that letter they refer to the appeal in the Court of Common Pleas of Dauphin County, and in referring to the verdict they state, "You will note that the tax of \$100 is equal to five mills upon a valuation of \$20,000 which is what we referred to in our letter of April 17."

**TRIAL EXAMINER:** That is all you know about the \$20,000?

**MR. HALL:** The total judgment was paid in the amount of \$105, \$100 represented the tax, and in that

letter the tax of \$100 is stated as equal to five mills upon a valuation of \$20,000.

[7519] By Mr. HALL:

Q. All of these valuations that we have just been considering, Mr. Gunn, were after the date of the transaction to which your cash values are related. Right?

MR. KING: I object to that because we have not established the valuations yet, sir.

By Mr. HALL:

Q. Will you refer specifically to Exhibits 168 and 169, Mr. Gunn? Those were the ones I had in mind. A. Those exhibits seem to me to show a lack of valuation. As a matter of fact, the last paragraph in each one of them said they couldn't estimate a value at that time. Then we later talked about a million dollars and now we are [7520] down talking about \$20,000.

Q. Mr. Gunn, were not the representations contained in Exhibits Numbers 168 and 169 for Identification made subsequent to the date of transaction to which your cash values relate?

THE WITNESS: Yes, sir, I believe that is right.

By Mr. HALL:

Q. Did Mr. Hutchinson ever purchase any of the McCall Ferry stock at his valuations? A. Yes, I think I would assume he purchased 18,840 shares at that valuation.

Q. For cash? A. No, not for cash but for things having a cash value.

[7521] Q. Did Mr. Hutchinson ever purchase any of McCall Ferry's stock for cash at any valuation? A. I don't know whether or not he did.

Q. Did he ever sell any of his stock for cash at any price? A. I don't know whether or not he did. I do know he gave some of it in lieu of cash. Whether that constitutes a sale for cash I don't know.

Q. You have previously testified that Mr. O'Connor participated in the determination of the cash value of the securities. Is Mr. O'Connor still alive? A. Mr. O'Connor is dead.

Q. When did he die? A. In July of 1944.

Q. What was his official capacity with Penn Water at the time of his death? A. He was Vice President and Secretary or Treasurer, I believe Secretary.

Q. When did Mr. O'Connor first become an officer of Penn Water and Power Company? A. I don't recall but I believe it was prior to 1930. I don't remember that date. It can be ascertained.

Q. What stock did Pennsylvania Water and Power Company buy since February 9, 1932, other than government bonds and the Safe Harbor stock?

[7522] THE WITNESS: I haven't the least idea. I have no knowledge of the company's investment portfolio, either as to what they bought or what they sold.

By MR. HALL:

Q. Haven't you previously testified, Mr. Gunn, that Mr. O'Connor had experiences in making investments for Penn Water? A. That is my understanding.

Q. But you don't know what those investments were, right? A. No.

Q. My information is that Mr. O'Connor was elected Assistant Treasurer as of February 19, 1932, and was elected Treasurer as of December, 1933. Will you verify that?

THE WITNESS: Yes, those two dates are correct.

[7523] By Mr. HALL:

Q. Mr. Gunn, did Hutchinson and Morison employ any assistants to aid them in their investigation of the hydro-electric possibilities on the Susquehanna River during the period from 1901 to 1905?

THE WITNESS: Yes, it is obvious that in order to make the engineering investigation that Hutchinson and Morison did they would have had to hire engineering assistants and surveyors as well, and probably also personnel to assist on the stream gauging and the calibration of river sections [7524] in connection with stream gauging.

I think it is also clear from the record that during that period of time Hutchinson had retained Lorenzo Semple as a lawyer to assist him and advise him on the matter, and I believe that counsel by the name of John G. Johnson, in Philadelphia, had been frequently consulted during that period.

By Mr. HALL:

Q. Semple and Johnson were legal assistants? A. Legal advisers or assistants, yes.

Q. All right. A. As I recall, I believe it was during that period that Thomas Newhall, consulting engineer in Philadelphia, I believe, had assisted Hutchinson. Those are the ones of which I know. There may very well have been numerous others.

Q. What assistance did Newhall render? A. I believe Hutchinson told me that Newhall assisted him in his early negotiations with Pennsylvania Railroad in connection with the prospective relocation of Pennsylvania Railroad's tracks in connection with Hutchinson's contemplated development of McCall Ferry.

MR. KING: What was the period of time covered by your prior question?

MR. HALL: 1901 to 1905.

MR. KING: I think the record shows Morison died before [7525] 1905. That is the reason I asked you the question. I think he died in 1903.

MR. HALL: That is probably true.

MR. KING: I just wanted to keep the record straight.

MR. HALL: So a part of the time it would be only Hutchinson.

MR. KING: Yes.

THE WITNESS: Then Hutchinson, I believe, had another assistant, or other assistants, it being William Barclay Parsons, because Parsons rendered a report in January of 1905, and it is obvious, in order to have made that report which he did on that date, it would have been necessary for him and numerous assistants of his to have done considerable work preparatory to the final report.

By MR. HALL:

Q. Were Newhall and Parsons engineers? A. Parsons certainly was. As I recall it, Newhall was, also.

Q. What other engineering assistants did Mr. Hutchinson have during the period I have indicated, or Mr. Morison or both? A. Boyd Ehle, and an engineer by the name of Anderson.

Q. Is this Boyd Ehle that you referred to the same one Hutchinson appointed as resident engineer on McCall Ferry? A. Yes, sir. Those are the only ones I have been able [7526] to find the names of. I don't think it necessarily should be assumed that that is all of the assistance that Hutchinson had. Of course, I guess he had assistance from his father-in-law, Dimock.

Q. Did Boyd Ehle render assistance to Hutchinson in connection with his investigation of the hydroelectric possibilities on the Susquehanna River during the period 1901 to 1905? A. Yes.

MR. HALL: ~~Mr.~~ Examiner, may we have marked for identification as Exhibit No. 170, a letter dated January 19, 1906, written by Cary T. Hutchinson to Boyd Ehle, Esquire, McCall Ferry, Pennsylvania?

TRIAL EXAMINER: The document described may be marked Exhibit 170 for Identification.

(Thereupon the document referred to was marked Exhibit 170 for Identification.)

By MR. HALL:

Q. Mr. Gunn, I show you the letter which has been marked as Exhibit 170 for identification written by Mr. Hutchinson to Boyd Ehle. Have you seen that letter before? A. Yes, sir; I believe I have.

Q. Is that the same Boyd Ehle that you referred to a few minutes ago? A. Yes, sir.

[7527] Q. Doesn't it appear from this letter that as late as January 19, 1906, which is a date subsequent to the June 1905 transaction which gave rise to the issuance of the securities, that Mr. Hutchinson was expressing the opinion that the stock of McCall Ferry was not worth anything? A. No, that is not the interpretation I would put on that letter. I would put the reverse interpretation on it. The first sentence in the letter reads as follows:

"I am enclosing form of stock deposit agreement, for 100 shares of the common stock of this company, which I am putting in your name to give you an additional interest in the company."

If he thought the stock was worthless I don't see how he expected it to create an additional interest in the company.

I notice the last sentence in the letter reads as follows:

"Will you explain this to Anderson,"—the details of how the stock was being transferred to him—"and tell him that I hope the stock, before long, will be worth something."

I take that as simply a statement that he hopes in time it will have a substantial value.

Q. He says worth something; doesn't he? A. Yes, and also giving it to him for the purpose of its being worth something. If it was worth nothing I don't see how it would ~~have~~ been any incentive.

[7528] Q. Don't you think that you should read the phrase "Give you an additional interest in the company" in the light of "I hope the stock before long will be worth something"? A. No, I don't read it that way at all. I simply read the last sentence in the letter to mean that before long it may be freely traded and have a substantial exchange value in the market.

Q. And "worth something" means to you substantial exchange value. Is that it? A. That was my interpretation of it.

Q. Did you use Exhibit Number 170 for identification in reaching your conclusions as to cash value of the stock of McCall Ferry? A. I didn't consider it particularly important from that point of view. I may have given it some consideration. I considered it of most importance as a bit of evidence indicating where a part of the stock went which Mr. Hutchinson said he had given in satisfaction of obligations he had created in developing the enterprise to the point where it was turned over to McCall Ferry Power Company. That was the principal use I made of Exhibit 170.

Q. Did you show this letter to Mr. Hutchinson at any time? A. I believe I did.

[7529] Q. When did you first show it to Mr. Hutchinson? A. I don't recall the time but I believe I showed it to Mr. Hutchinson during the conferences in Baltimore shortly after I first approached him in connection with assisting the company in establishing the history of McCall Ferry Power Company.

Q. It is a fact, isn't it, that this letter is not included in the participation which you submitted to Hutchinson

for his consideration? A. I don't recall whether it is or not. That very well may be true.

Q. Would you check whatever records you have, Mr. Gunn, to ascertain whether or ~~not~~ you actually did submit this letter, Exhibit 170 for identification, to Mr. Hutchinson for his consideration? A. I have no records on that other than remembering myself or Mr. Chase or Mr. Eichhorn.

Q. Were you discussing cash value of the stock with Mr. Hutchinson when you showed him the letter? A. No, I think I was trying to find out if he recollects that these shares of stock referred to in this letter came from his 18,840 shares, or whether they might have come from some other block of the common stock of McCall Ferry Power Company.

Q. Did he recollect that in January of 1906 he had [7530] hoped the stock would be worth something before long? A. I don't believe I discussed that question with him at that time. He did recollect, when he saw this letter, that he had given those shares to Ehle and Anderson, and he told me they were given to Ehle and Anderson as part compensation for the work that they had done for him prior to the time the property was turned over to McCall Ferry Power Company.

Q. What do you mean by "part compensation," Mr. Gunn? A. I understood from him he also paid them some cash.

Q. Cash as a salary? A. Yes, surely.

Q. All along? A. That is my understanding of it. I am pretty sure the individual didn't work for him free.

Q. Who is this Mr. Anderson referred to in Exhibit 170 for identification in the next to the last line? A. The same Mr. Anderson, I take it, that is referred to in the fourth line.

Q. Who was this Mr. Anderson? A. An engineer that assisted Ehle and Hutchinson in their investigation of the river. I think both Mr. Ehle and Mr. Anderson

were subsequently connected with McCall Ferry Power Company in association with Hutchinson.

Q. Isn't it a fact that when Mr. Hutchinson wrote this [7531] letter of January 9, 1906, that he had no reason to be other than perfectly frank and honest about its worth? A. I think that is quite true.

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By MR. HALL:

Q. Mr. Gunn, who was James H. Harlow? A. He was a hydro-electric engineer, or a hydraulic engineer, who in the middle 1890's began investigating the possibilities of power generation from the Susquehanna River and began acquiring properties, as I understand it, on his own behalf and on behalf of other people interested in the development of the river.

Q. Was Mr. Harlow familiar with the conditions and land values along the Susquehanna River? A. Yes, I would assume that he was.

Q. Had he attempted to secure financing for his project prior to 1907? A. It is my understanding that he had, he and people associated with him.

Q. What experience had he had with other hydro-electric [7532] projects? A. Other than his experience on the Susquehanna River?

Q. Yes. A. I really don't know. At least I don't recall. I did have some idea at one time but I don't recall now.

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By MR. HALL:

Q. Did you consider Mr. Harlow's opinions of the cash value of the McCall Ferry stock? A. That was one of the evidences of the value of that stock that I considered.

Q. Did you think that because Harlow was testifying as a witness for those whose interest you say lay in placing a low value on McCall Ferry securities that he, while so testifying under oath, would not have told the truth? A.

No, I don't think that would have been the result. I do think this would have been the effect, however: In expressing judgment on a matter of that sort I should think that there would always be a leeway in a person's judgment since he doesn't know precisely what the answer is, [7533] and that there would be a tendency for him to state the value on the low side.

Q. He was under oath, wasn't he? A. Yes, I think so, but he didn't state his value in limits. He stated them in a precise figure.

Q. Part 21 of Exhibit 27 shows that Mr. Harlow was stating what he thought the stock was worth. Do you consider that this expression of value is synonymous with cash value at the time of the transaction? A. Which page does that occur on, Mr. Hall?

Q. 182.

THE WITNESS: I think it is synonymous with Harlow's opinion of the cash value. However, it appears to me from the whole tone of the cross-examination that Harlow may have been at that point, it would appear he was, expressing offhand opinions.

TRIAL EXAMINER: Is that cross-examination or direct so far as you know?

THE WITNESS: I suppose it is cross-examination, although I am not sure.

MR. KING: That is correct. The document indicates that it is direct examination because, on page 182 Mr. Williams, whom I assume to be one of the lawyers on the other side, says "Don't cross-examine."

[7534] By MR. HALL:

Q. Will you verify whether it was direct or cross, Mr. Gunn? A. Yes, sir. I think that can be done.

TRIAL EXAMINER: Do you know the nature of that proceeding?

THE WITNESS: Yes, sir, condemnation proceeding in which the interests represented by Mr. Harlow were attempting to condemn the property of McCall Ferry Power Company which lay below the McCall Ferry site. It was because of the fact that the proceeding was of that nature that it indicated to me Harlow, representing the buyer, was not overstating the value of the securities, if I may put it that way.

TRIAL EXAMINER: He was representing whom?

THE WITNESS: He was representing the interests which were attempting to condemn and take the property of McCall Ferry Power Company below the McCall Ferry development.

TRIAL EXAMINER: Is that the Susquehanna Power Company which was attempting to condemn the property of McCall Ferry Power Company?

THE WITNESS: I believe that was the company. There were two companies below that. Yes, I am sure it was the Susquehanna Power Company.

MR. KING: It states that, Mr. Examiner, on the title page preceding page 182 of Exhibit 27.

[7535] THE WITNESS: Yes, sir. It was the Susquehanna Power Company.

MR. KING: It gives the title of the case.

TRIAL EXAMINER: Why are the Proprietors of the Susquehanna Canal involved?

THE WITNESS: That was the name of the company which had developed the Susquehanna Canal in Maryland, and the corporate name in which I suppose the canal rights then stood.

TRIAL EXAMINER: In what state is Cecil County, Pennsylvania or Maryland?

THE WITNESS: Maryland.

**TRIAL EXAMINER:** Is that a reported case?

**THE WITNESS:** Yes, sir.

**TRIAL EXAMINER:** Do you have the citations?

**MR. GOLDBERG:** The Examiner does not mean whether there was a transcript. He wants to know whether there is a written opinion reported in some official report.

**THE WITNESS:** Oh, there was no opinion because the case was compromised before it ever came—I believe there may have been an opinion and a request for an appeal, and then while the appeal was pending I believe the case was compromised, and ultimately led to the agreement in which McCall Ferry Power Company, Susquehanna Power Company, and the company in which the Welch group was interested pooled their [7536] interests in a lower development, and taking their interest on the ratio of the head of the river that each one controlled.

**TRIAL EXAMINER:** This was before the Harlow interests and the Hutchinson interests had compromised, wasn't it?

**THE WITNESS:** No, this was a second one. The first time they got into trouble was in 1902 and 1903. That trouble related to the fact that Harlow owned this canal in Pennsylvania which passed up the west shore of Susquehanna River through the location where Hutchinson wanted to construct his projects.

If you will refer to Exhibit 26, Mr. Examiner, and to the map which is on the back of that exhibit, and to the west side of the river which is towards the bottom of the page, you will see there a dotted line which is colored green, which parallels the west shore of the river.

You will also note, just below Muddy Run which flows into the river from the East, just upstream from Muddy Run, you will notice a sketch there which is entitled "McCall Company or Holtwood dam."

The difficulty in 1902 and 1903 between Hutchinson and Harlow-McGaw arose over the canal rights which lay upstream from the site of the McCall Ferry project, and the compromise which took place in 1902 or 1903 related to, and gave, Hutchinson the right to flood the canal to such extent as it would be necessary to flood it by reason of the construction of his contemplated project at Holtwood.

[7537] That left in Harlow-McGaw's control all of the canal south of the McCall Ferry-Holtwood site and north of the backwater from a dam to be constructed there by Hutchinson.

Then when Harvey Fisk and Sons took control of the project—

TRIAL EXAMINER: Is this all in Exhibit 26?

THE WITNESS: Yes, sir, it is all there, but you won't find it all there in a single place. Exhibit 26 is set up primarily to show the development of McCall project.

I am now explaining the relationship of Harlow-McGaw which makes it necessary for me to collect together the bits that are included in Exhibit 27.

TRIAL EXAMINER: All right.

THE WITNESS: Will you read the last sentence again?

(Sentence read.)

THE WITNESS: —Harlow-McGaw interest approached Harvey Fisk's interests and sold to Harvey Fisk in its entirety all of Harlow-McGaw's holdings on the Susquehanna River from Wrightsville, Pennsylvania, which was the upstream terminus of the canal, to Havre de Grace, Maryland, which was the downstream terminus of the canal.

The section of that canal which is noted as Susquehanna and Tidewater Canal is the name for the canal which extends from Wrightsville to Havre de Grace, and the Proprietors of Susquehanna Canal lies in Maryland on the East shore [7538] of the Susquehanna River beginning at a point just north of the tract of land noted as Bell Farm,

and at a point designated as Ark Haven, and extends downstream to a point noted as Tidewater, which is just north of Rock Run.

**TRIAL EXAMINER:** The condemnation proceeding in which Harlow-McGaw was testifying when he gave this testimony to which we have previously referred was the condemnation proceeding by which Susquehanna Power Company sought to obtain from McCall Ferry Power Company the rights owned by the Proprietors of Susquehanna Canal. Harlow was then interested in the Susquehanna Power Company.

**THE WITNESS:** Yes, he was then interested in the Susquehanna Power Company.

Now, the thing which made Harlow's testimony in that proceeding relating to McCall Ferry bonds and common stock pertinent was the fact that he had previously sold these canal rights to Harvey Fisk and Sons, and accepted in exchange \$200,000 cash, \$250,000 par value of McCall bonds and I believe \$100,000 par value of McCall common stock.

**TRIAL EXAMINER:** How did Harvey Fisk hold that —through McCall Ferry Power Company?

No, it would still be held by Proprietors of Susquehanna Canal.

**THE WITNESS:** It would be held through the ownership of a stock of Proprietors of Susquehanna Canal as I understand it. It was then in the possession of McCall Ferry Power Company.

[7539] Harvey Fisk and Sons didn't keep ownership to any of the lands or water power rights which they obtained from Harlow-McGaw in their early 1905 transaction, but conveyed all of that to McCall Ferry Power Company through the Susquehanna Contracting Company transaction.

**TRIAL EXAMINER:** Is the Susquehanna Power Company featured at all in your Exhibit 26?

**THE WITNESS:** Only to a limited extent to show the relationship between that development and the development of McCall Ferry Power Company as to the competition between them and as to the compromise of this attempt to condemn their canal property on the part of Susquehanna Power Company.

Susquehanna Power Company finally became the company which developed the Conowingo project, which is shown as a black line across the river just south of Amos Island, and labeled "Conowingo Dam", on the map which is a part of Exhibit 26.

**TRIAL EXAMINER:** Very well.

**By MR. HALL:**

Q. Mr. Gunn, isn't it a fact that in connection with Mr. Harlow's testimony there was a verdict which was appealed from, but while the case was pending the case was settled?

A. That is my recollection.

Q. As you have already testified or indicated, you merely submitted excerpts of Mr. Harlow's testimony and included them in Part 21 of Exhibit 27? [7540] A. Yes, sir.

Mr. Harlow's testimony in that case as I recall it was very voluminous, and there was only a small part of it which related to his opinion as to the value of these securities.

Q. But that is not all of the testimony included in Part 21 of Exhibit 27, all of the testimony related to McCall Ferry Securities? A. No, I don't think that is all of it. That is the particular part of his testimony which contains the sense of his testimony as it relates to the valuation of the securities.

**MR. KING:** May I have the last question and answer, please?

(Question and answer read.)

**MR. KING:** I am a little confused by the question and answer the reporter just read. Did you mean

there any testimony contained on pages 182, 183 of Exhibit 27 which do not relate to the stock value?

MR. HALL: No. I meant to ask whether or not this was all of Mr. Harlow's testimony in that proceeding.

MR. KING: All right.

THE WITNESS: No, sir, it was not.

By MR. HALL:

Q. And it is not all of Mr. Harlow's testimony bearing [7541] on the question of the cash value of the securities. Isn't that so? A. Yes, I think that is right. This particular part that is included, this particular part of Mr. Harlow's testimony which is included, as Part 21 of Exhibit 27 is the part of his testimony which contains the sense of what he said in that case relating to the valuation of those securities.

Q. Do you know whether or not that testimony which is included in Part 21 took place on January 28, 1907?

\* \* \*

THE WITNESS: I cannot state positively but I believe that is the date on which the testimony was taken.

MR. HALL: Mr. Examiner, may we have marked for identification as Exhibit 171, excerpt from the testimony of J. H. Harlow. This excerpt is taken from page 99 of the transcript, and the transcript is contained in the company's general file No. 40-B.

TRIAL EXAMINER: Is this in the same proceeding as Part 21 of Exhibit 27?

\* \* \*

MR. HALL: Yes, sir.

\* \* \*

[7542] (Thereupon the document referred to was marked Exhibit No. 171 for Identification.)

\* \* \*

By MR. HALL:

Q. Have you read that exhibit, Mr. Gunn? A. Yes, sir.

Q. Do you recognize this testimony of Mr. Harlow? A. I don't recognize it, but if you found it in our files it is all right.

Q. Isn't it part of the same testimony of which Part 21 of Exhibit 27 is a part? A. It appears to me to be a continuation of that line of testimony, with this limitation: It appears that the testimony in Part 21 of Exhibit 27 is probably direct testimony, and the testimony in Exhibit 171 gives me the impression, at least, it is probably cross-examination on the same [7543] subject.

MR. KING: May I point out to you, Mr. Examiner, that pages 182 and 183 of Exhibit 27 bear up in the right-hand corner pages 11 and 12, and exhibit for identification No. 171 bears page 99.

By MR. HALL:

Q. Did you get your impression that Exhibit 171 covers cross-examination because of the fact that Willis and Homer represented McCall Ferry Power Company? A. No, just from the tone of the question.

[7544] MR. HALL: Mr. Examiner, may we have marked for identification as Exhibit Number 172 an additional extract from the testimony of Mr. Harlow in the same proceeding? This extract was taken from pages 39 and 40 of Mr. Harlow's testimony.

(The document referred to was marked for identification as Exhibit Number 172.)

[7547] By MR. HALL:

Q. In trying to ascertain the cash value of the stock, and to understand the method followed in issuing it, did

you consider the laws of Pennsylvania as they existed in 1905 with reference to the issuance of bonds? Did you consider that?

[7548] THE WITNESS: No, I don't think I specifically considered that law of Pennsylvania. In arriving at a conclusion as to the value of securities, as I said before, they were discussed with counsel and counsel were probably guided in their opinions as to the laws of Pennsylvania.

By MR. HALL:

Q. Did you consider Part 4 of Exhibit 27? A. Yes, I considered it for some things but I don't recall having considered it from the point of view of the Pennsylvania law in the issuance of securities.

Q. Did you consider what Johnson was saying about the requirements of the law in connection with the issuance of bonds? A. No, I can't say that I particularly did. The principal use I made of the Exhibit, of Part 4 of Exhibit 27, was the description of the plan which was proposed to Johnson and which I understood to be Hutchinson's original plan.

[7550] By MR. HALL:

Q. Mr. Gunn, have you included any amount in your original cost determination as compensation for services alleged to have been rendered to the McCall Ferry Power Company by Harvey Fisk and Sons? A. May I have the question?

(Question read.)

THE WITNESS: Yes, sir.

By MR. HALL:

Q. How much? A. \$199,570.31.

Q. How did you arrive at that particular amount?

A. The derivation of that amount is shown at the bottom of page 53 in Exhibit 26.

Do you want an explanation of what appears on that page?

Q. Yes. A. Mr. Pliny Fisk, or his firm, rather, received as their total compensation 1,875 shares of preferred stock which has been valued for the purpose of the original cost determination at \$50 a share, and making an amount of \$93,750.

He received, also, 17,537½ shares of common stock which has been valued at \$25 per share, making an amount of \$438,437.50.

The sum of those two amounts is \$532,187.50.

In Mr. Fisk's affidavit and correspondence, which is [7551] Part 9 of Exhibit 27, Mr. Fisk has stated it as his opinion that the total compensation his firm received should be allocated three-eighths to management services and five-eighths to banking service. Three-eighths of \$532,187.50 amounts to \$199,570.31, which is the amount included in the original cost claim for the management services of the firm of Harvey Fisk and Sons.

Q. Did you include anything for the banking services of Harvey Fisk and Sons? A. Not directly, but that does come in indirectly.

Q. Are you saying that Harvey Fisk and Sons rendered to McCall Ferry management and banking services? A. Yes, sir.

Q. How was Harvey Fisk and Sons paid for their services? A. Through the issuance to them of 1,875 shares of preferred stock and 17,537½ shares of common stock, both being stocks of McCall Ferry Power Company.

\* \* \*

[7552] By MR. HALL:

Q. Did Harvey Fisk and Sons receive any specific amount of stock for banking services as distinguished from management services? A. No, sir.

Q. Will you describe the management services performed by Harvey Fisk and Company for McCall Ferry?

A. The records of Harvey Fisk and Sons were never found, and the only knowledge I have of the management services rendered by Harvey Fisk and Sons are those described by Mr. Fisk in the various parts of Part 9 of Exhibit 27.

Q. Over what period of time did the Fisk firm perform services? A. From the time they entered the picture in March, 1905, until the McCall Ferry Power encountered financial difficulty. Just what date during that later period their services could be said to be terminated I don't know, but perhaps with the receivership or with the appointment of the receiver.

Q. I take it you are now referring to management services? A. Yes, sir. Wasn't that your question?

Q. I think I left out the word "management", but I intended to have had it in my question. A. Yes, sir, I took it that you did.

[7553] Q. What management services did Harvey Fisk and Sons render at the time they came in as bankers in March of 1905? A. It is my understanding that they took over the management at that time in the sense that they completed the formation of the company, they purchased Harlow-McGaw's property, and arranged for the organization of the company and the selection of experts and other services of that sort. At least that is my understanding of it.

Q. Through whom were the management services rendered? A. William M. Barnum.

Q. All of them that you have been talking about? A. Well, at least in this sense: Mr. Fisk says that he turned over, says in Part 9 of Exhibit 27, that he turned over the principal functions of the management of the McCall Ferry enterprise to Mr. Barnum, and in giving you that answer I was relying upon that statement of Mr. Fisk's.

Of course, the legal services that were rendered were rendered by Simpson, Thacher and Bartlett, which I understand was the law firm selected by Fisk to replace the law firm which previously had handled Hutchinson's and McCall Ferry Power Company's attempt to develop power on the river.

Q. What were Mr. Barnum's duties with respect to the management of the McCall Ferry Power Company? A. I don't know what his duties were any more particularly than they are stated by Mr. Fisk in Part 9 of Exhibit [7554] 27. He was a member of the board of directors, he was a member of the executive committee, I believe, and he was a member of the voting trust committee, I believe. I don't recall whether those functions are stated in Part 9 of Exhibit 27 or not, but in any event he did serve in those capacities.

Q. When Mr. Fisk says that Barnum rendered management services does he say that he rendered them in the capacities you have just referred to? A. I don't recall just how he stated it. Do you wish me to check it.

Q. If you will just glance down the page?

THE WITNESS: May I have the question, please?

(Question read.)

THE WITNESS: No, in glancing at Mr. Fisk's statement I don't see that he enumerated those capacities. However, it is evident from McCall Ferry Power Company's records, and from Exhibit 26, and parts of 27 which support Exhibit 26, that Mr. Barnum held the three positions that I have spoken of, and I recall now that there was one other that I forgot to mention. He was Chairman of the bondholders committee when the project got into financial difficulties. I don't believe I previously mentioned that.

None of those capacities are enumerated as such in Mr. Fisk's statement, but they are clearly evident from all [7555] of the remainder of McCall Ferry's records.

Q. Was the Chairman of the bondholders committee a management function? A. I don't know what you would call it. Perhaps if it wasn't management it was what Fisk considered was necessary to discharge his obligation to the people who had bought bonds through his house. It is my understanding he considered such things as that an

obligation. Whether you would call it management of McCall Ferry Power Company, I really don't know.

Q. Are those services covered in the cash value determined by Mr. Fisk? A. What do you mean by "Those services"?

Q. Chairmanship of the bondholders committee. A. As I recall it, the bondholders committee received specific compensation, or at least a certain amount of specific compensation. Whether that is to be looked upon as total or not I really don't know. I don't recall what the amount of the compensation was that they received for acting as a bondholders committee.

[7569] By MR. HALL:

Q. Mr. Gunn, did Pliny Fisk, Sr., show you any records or memoranda to substantiate his claim that Harvey Fisk and Sons rendered management services to McCall Ferry? A. No, sir, he showed me no memoranda. As a matter of fact, he didn't have an opportunity to, because, as I said, my connections with Fisk were carried on entirely through his lawyer. The only evidence I had directly from Fisk on that was Mr. Fisk's statement made to me on the occasion of my meeting with him.

Q. As a matter of fact, since the Fisk firm records were destroyed some time prior to your contact with him he would not have been in a position to show you any records. Isn't that so? A. That is correct. He wouldn't have had any firm records, at least, to show me.

Q. Did you show Pliny Fisk any records or memoranda to support the claim for management services?

[7570] A. You mean by that did I personally and directly show them to him?

Q. Yes. A. No, sir.

Q. Did Mr. Cole, Pliny Fisk, Jr., or anybody else acting in behalf of Mr. Fisk, show you any records or memo-

randa to substantiate the claim that Harvey Fisk and Sons rendered management services?

THE WITNESS: I don't recall they showed me anything other than what I had already seen.

By MR. HALL:

Q. Did you show Pliny Fisk, Jr., or Mr. Cole any records or memoranda to substantiate the claim for management services by the Fisk firm? A. Well, I showed Mr. Cole all of the documents included in the Fisk participation, and, as I recall it from time to time during the six months he worked on the case, I showed him numerous other documents. I don't recall just what the others were. However, all of the documents shown to Mr. Cole are included in the company's files.

Q. Do you recall any documents included in the participation which support the claim for management services? [7571] A. Well, directly or indirectly it seems to me they all had a bearing on it.

Q. How? A. Either by showing that Fisk was the principal banker in the transaction or by indications of various sorts that he was in control of the enterprise.

MR. KING: Would you like to see the participation, Mr. Gunn?

MR. HALL: I don't have it with me, I am sorry. It is on my desk.

THE WITNESS: I think I recall in general what is in the participation.

By MR. HALL:

Q. Do you know whether Pliny Fisk, Sr., relied upon or resorted to any evidentiary material that you know of in making his claim? A. I don't believe I understand the question. The two things which give me trouble are what is meant by evidentiary material and what is meant by his claim.

Q. Well, any documentary evidence. A. He relied certainly upon what evidence was included in the participation, and any other documents from our files which I gave Mr. Cole.

Q. Did you give Mr. Cole any documents not contained in the participation? [7572] A. I am pretty sure I did, and at least I gave him a statement which is included in the participation which contains data drawn from other documents.

Q. Was that statement presented to Mr. Fisk prior to or after the date of his affidavit? A. As I recall the documents, it was included in the participation and a statement of the participation was given to Mr. Fisk by Mr. Cole during the months that Mr. Fisk worked intermittently on the problem. It is my recollection that the participation given to him at that time had errors in it which Mr. Cole pointed out Mr. Fisk had mentioned.

Then at about the time when the exchange of letters, the first of which is dated July 9, 1939, and is contained in part 9 of Exhibit 27, was sent to Mr. Cole, the participation we now have was also given to Mr. Cole in its final form containing the corrections which Mr. Fisk had suggested.

Q. Are you saying that prior to the date of Mr. Fisk's affidavit, which is December 29, 1938, you did not present to him through Cole the complete participation which Mr. King turned over to me a few days ago? A. No, I am saying the reverse of that, with this modification: A complete participation was presented to Mr. Cole, but it was not in exactly the form as the final participation for the reason that as I recall I had misinterpreted in some respects Fisk's connection with the McCall [7573] Ferry Company, and he suggested corrections which might be made to it.

[7574] Q. Do I have the final participation? A. The final participation.

Q. Where is the previous participation? A. Probably destroyed when we made the final.

Q. Are you sure it has been destroyed? A. Yes, it has been destroyed.

Q. What did you misconstrue in the first participation? A. I believe in one of the early ones, at least, I had attempted from the documents I had available to me then, at least I had drawn the conclusion, that there was no one dominating interest in the McCall Ferry enterprise under Fisk, but it was a joint endeavor of some sort. As soon as I showed that to Mr. Fisk he very quickly, as soon as Mr. Cole showed that to Mr. Fisk, rather, he very quickly pointed out that that was incorrect.

\* \* \*

By MR. HALL:

Q. Did you subsequently obtain any documents which confirmed Mr. Fisk's statement as to control? A. I can't answer that precisely, and for this reason: There were documents in Lee, Higginson's files which I obtained and which do, in my opinion, show Fisk control. The point upon which I am uncertain is whether I obtained those documents before I talked to Mr. Fisk or after.

[7575] Q. What Lee, Higginson records are you referring to? A. The correspondence between Lee, Higginson and Bertron, Storrs and Griscom relating to Lee, Higginson's compensation which are contained in Part 11 of Exhibit 27 and which are a letter dated March 25, 1905, from Bertron, Storrs & Griscom to Lee, Higginson & Company; another letter dated March 28, 1905, which is a letter to Lee, Higginson from Bertron, Storrs & Griscom; and another letter dated March 30, 1905, from Bertron, Storrs and Griscom to Lee, Higginson; another letter dated March 8, 1906 to Lee, Higginson from Bertron, Storrs & Griscom; another letter dated March 9, 1906, from Lee, Higginson to Bertron, Storrs & Griscom.

Q. And the letters embraced in Part 11 of Exhibit 27 are the ones which you relied upon to support or confirm Fisk's statement? A. A part of it, yes.

Q. What is the other part? A. I can't recall offhand but I think you will find inferences to that effect all through Exhibit 27 in numerous of the documents. At the moment I can't put my finger on them all.

Q. Will you point out one where we can find that inference? A. I am at a loss now. We are looking for evidence of Fisk's domination of the enterprise, are we not?

[7576] Q. Management? A. Yes. Another piece of evidence is the fact that Harlow-McGaw went to Harvey Fisk and Sons for the sale of their property. Another one is the fact that Simpson, Thacher and Bartlett, Fisk's attorneys, displaced Hutchinson's attorneys, who were Coudert Brothers.

Another one, of course, is Hutchinson's statement to the effect that Fisk deprived him of his interest of control of the enterprise. Those I can think of offhand.

Q. When was the destroyed participation submitted to Fisk or Cole? A. I don't know just what date it was. Some months prior to the date of his affidavit, however, which was December 29, 1938.

\* \* \*

By MR. HALL:

Q. Was the final participation submitted to Fisk or Cole with your letter of January 9, 1939, embraced in Part 9 of Exhibit 27, Pages 74 and 75?

\* \* \*

THE WITNESS: Yes, I believe it was. The letter so states in the first paragraph.

[7577] By MR. HALL:

Q. What else, other than what you have already referred to, had you misconstrued in the participation which you initially submitted to Mr. Fisk? A. I don't recall

anything else in particular of importance. I think there may have been some details.

Q. Mr. Gunn, is the participation that I have the only one that was ever submitted to Mr. Hutchinson? A. The only one in so comprehensive a form as the one you have. There were several descriptions comparable to the descriptive part of that participation submitted to Mr. Hutchinson.

Q. Do I have the final one now? A. Yes, sir.

Q. How many were submitted to Mr. Hutchinson before the final one that I have? A. I don't recall, but I would say two, three or four.

Q. When was the final participation submitted to Mr. Hutchinson? A. Only a few days before the date of his affidavit.

Q. When was the first one submitted, Mr. Gunn? A. May I have the question, please?

(Question read.)

THE WITNESS: Ten or twelve months before the date of his affidavit.

[7578] By MR. HALL:

Q. Mr. Fisk, in his affidavit as shown at the top of page 71 in Exhibit 27, states, "I have examined the photostatic copies hereto attached and identified by my initials, which photostatic copies I believe were true and correct copies of the original documents or of the true and correct copies thereof."

Where are the photostatic copies initialed by Mr. Fisk? A. I believe they are included in the participation.

Q. I don't recall seeing Mr. Fisk's initials on those participations, on those documents contained in the participation. A. Then they must be in the company's files.

Q. This affidavit of Mr. Fisk's is not complete without the photostatic copies initialed by Mr. Fisk. Isn't that right, Mr. Gunn?

MR. KING: I object to that question, if Your Honor please, I think the record shows that copies are already in the file. Whether they are initialed by Mr. Fisk does not make a particle of difference, it seems to me.

MR. HALL: Until we get the ones which are initialed, Mr. Examiner, we apparently won't have the ones he relied upon.

TRIAL EXAMINER: Read the question, please.

(Question read.)

[7579] TRIAL EXAMINER: You may answer the question.

THE WITNESS: I believe it would be more complete if we had those documents. As a matter of fact, I have been under the impression they were in Exhibit 27.

By MR. HALL:

Q. Would you submit those documents bearing Mr. Fisk's initials? A. We will undertake to find them.

MR. KING: Mr. Examiner, may I inquire of Mr. Hall whether he is implying that the documents in Exhibit 27 are different from the documents bearing Mr. Fisk's signature?

MR. HALL: Mr. King, I don't intend to make any implication. I don't know. I am trying to make certain as to what documents Mr. Fisk actually relied upon when he prepared this affidavit.

I assume those documents would be attached to the original of Mr. Fisk's statement.

TRIAL EXAMINER: Are those documents included somewhere in Exhibit 27?

THE WITNESS: Yes, I believe they are, but not the ones, I believe, with Fisk's initials on them.

TRIAL EXAMINER: Very well.

By MR. HALL:

Q. Mr. Gunn, am I correct in assuming that the several participations submitted to Hutchinson were submitted during [7580] the period from about the middle of 1938 to the date of his affidavit, January 13, 1939? A. Generally that is true, although I believe the first one was submitted to him in February or March of 1938.

Q. Did McCail Ferry or Susquehanna Contracting Company enter into any contract with Harvey Fisk and Sons for management services? A. I don't know.

Q. None that you know of? A. I never found a contract covering that service.

[7587] By MR. HALL:

Q. Mr. Gunn, what corporate management services did the Fisk firm render? A. I can't describe them in any more particulars than I did several minutes ago and which I did several times in the last two or three days.

Q. What other documents embraced in Exhibit 27 disclose management services rendered by Harvey Fisk and Sons? A. I don't recall offhand but I am very sure there are several others that directly or indirectly bear upon and indicate he did manage the enterprise.

Q. Other than those you have already referred to what other documents contained in Exhibit 27 do you have in mind? [7588] A. I said I didn't recall the specific documents. If you wish I suppose we can go through all 68 of them one at a time, searching for such indications, if you wish, and I am sure we will find a large number of them.

Q. That is what you have to do, search for it; is that right? A. Certainly. I cannot recall or remember 600 pages in Exhibit 27. As a matter of fact, most of the pages are printed. I might also be able to go back to the 15 filing cases and find still more of them if you wish, but it would be an interminable job.

**TRIAL EXAMINER:** But the documents Mr. Fisk initialed would be all the documents you would expect to find. Isn't that true?

**THE WITNESS:** No, not at all, Mr. Examiner. They are only the important ones. To indicate that fact to you, when I compiled Exhibit 27, or when it was compiled under my supervision, I put in that exhibit the documents that I thought were important and had an important bearing on the determination of original costs with which we are here engaged.

In the last few days the Commission Staff has pulled out several other documents from the files we made available to them that they thought had a bearing on it. I am inclined to think some of them may have had a bearing on it one way or [7589] the other. I have no doubt they will pull out innumerable other documents from those files. I just couldn't make Exhibit 27 of a workable size without making a selection.

**TRIAL EXAMINER:** When you are able to identify the documents Pliny Fisk initialed, then those which appear in Exhibit 27 in some other place bearing his initials would be the ones you consider important on this subject?

**THE WITNESS:** Most important ones, yes, sir.

By MR. HALL:

Q. Did you mean to say to the Examiner the documents the Staff pulled out and showed you supported your position? A. I think in general they do together with the other documents we will probably produce in connection with it. Several of them, I am told, were taken out of context.

Q. Who told you that? A. Mr. Chase or Mr. Eichhorn or somebody. I asked them to look in the file and find out which one—

Q. Which ones? A. I don't recall which ones they were.

Q. Are you saying Exhibit 170, Mr. Hutchinson's letter to Boyd Ehle was taken out of context? A. I don't recall whether or not that is one of them.

Q. How about exhibits numbered 168 and 169—were they taken out of context? A. I don't recall.

[7590] Q. How about Exhibits 171 and 172; were they taken out of context? A. I don't recall; but I strongly suspect they were.

• • •  
By MR. HALL:

Q. Mr. Gunn, isn't it a fact that the March 25, 1905, plan, as shown at the top of page 82 of Exhibit 27, says only that Harvey Fisk and Sons was willing to aid in the financing of the project to the extent of taking agreements from the subscribers for the securities, acquiring securities, and making and procuring loans? A. The paragraph at the top of page 82 which Commission counsel has referred to reads as follows: "Whereas, the bankers have been requested and are willing to aid in financing the said plan to the extent of taking agreements from the subscribers for the purchase of bonds and preferred [7591] stock of the power company, of acquiring the bonds and stock for delivery under such purchase, and of making or procuring the loans hereinafter mentioned;".

Q. In other words, that is what Harvey Fisk and Sons were to do under this agreement? A. It says just what I read into the record.

• • •  
[7595] By MR. HALL:

Q. What experts, engineers, contractors, or other personnel were selected by the Fisk firm? A. It is my understanding they all were in the sense that Barnum had the right to accept or reject them. At least that is my understanding of it. That would include Sanderson and Porter, the rejection of the early bids which were taken for construction, the acceptance of Hugh L. Cooper's later bid for construction, the selection of the engineers that

were on the engineers' advisory board, and probably the selection of at least the contractors on the principal equipment.

[7596] Q. How did you reach the conclusion that Barnum could accept or reject personnel and contractors? A. Because Mr. Fisk said he controlled the McCall Ferry enterprise and Mr. Barnum was his representative. In those days bankers didn't seem to have any hesitancy in making selections, of that sort that they wanted. As a matter of fact, it is my understanding it was in order to put a stop to that practice that the Securities and Exchange Commission was established.

TRIAL EXAMINER: You needn't speculate on that.

If Barnum had the authority to accept and reject and merely exercised such authority who had the authority to appoint and to exercise that authority?

THE WITNESS: That seems to me to be the authority to appoint. If you have the authority to accept or reject it seems to me that is the authority to appoint. Barnum undoubtedly had the advice of perhaps numerous people as to who to consider.

TRIAL EXAMINER: Do you know whether he did?

THE WITNESS: No more than he was chairman of the executive committee and he was Fisk's representative, and Fisk controlled the enterprise. It just seems to me that is an inescapable conclusion.

TRIAL EXAMINER: Do you know what the executive committee did?

[7597] THE WITNESS: They met every so often and considered matters relating to the company's progress, and it is my understanding that their meetings were interim between the meetings of the board of directors and that perhaps the executive committee would perhaps expect to go into matters of greater detail.

TRIAL EXAMINER: Do you have records of the executive committee?

**THE WITNESS:** Yes, we have the executive committee minutes. They have been available to the Commission staff for two and a half years, Mr. Examiner.

**TRIAL EXAMINER:** Did those minutes show what was done by the committee with regard to these contractors and engineers?

**THE WITNESS:** Yes, the executive committee minutes, or the board minutes, show the approvals of these various selections.

**TRIAL EXAMINER:** Do they show who selected them or how they were selected?

**THE WITNESS:** No, I don't think you will find that. As I recall the minutes of both the executive committee and the board, they state nothing but the conclusions. They don't state the reasons.

**TRIAL EXAMINER:** Nowhere in your Exhibit 26 or Exhibit 27 do you have a historical resume of the activity of the [7598] board of directors of the McCall Ferry Power Company after its incorporation or executive committee prior thereto?

**THE WITNESS:** Not separately as such, Mr. Examiner, but Exhibit 26, which is supported primarily by Exhibit 27, takes recognition of the contents of those minutes.

**TRIAL EXAMINER:** To get the picture a little more precisely, how did the executive committee fit into this thing? Did it function prior to the organization of McCall Ferry Power Company?

**THE WITNESS:** No. The executive committee we are referring to is the executive committee of McCall Ferry Power Company.

If you will turn to page 44 of Exhibit 26, Mr. Examiner, you will find that the permanent board of directors, the executive committee to which we have just referred, and the permanent officers of the company were all elected on August 8, 1905.

**TRIAL EXAMINER:** Where is it indicated Mr. Barnum was Chairman of that executive committee?

**THE WITNESS:** May I have the question, please?

(Question read.)

THE WITNESS: There is no formal indication on page 44 of Exhibit 26. As I recall it that was a conclusion I drew from the fact Barnum in general was the one who stated the conclusions of the executive committee.

[7599] **TRIAL EXAMINER:** Where?

**THE WITNESS:** In the minutes.

**TRIAL EXAMINER:** That would be consistent with his acting as secretary of the executive committee, wouldn't it?

**THE WITNESS:** I don't think so. I would have to refer back to that to be certain. The executive committee so far as I know had no secretary. At least, Mr. Examiner, I have not referred to those minutes for almost eight years now, and to answer your question with any precision I would have to look back and see.

By MR. HALL:

Q. Isn't it a fact Barnum was not chairman of the McCall Ferry executive committee? A. You mean he was not formal chairman?

Q. He was not any kind of a chairman, he was not chairman in any sense of the word? A. I will have to refer back to the minutes. If he wasn't then it would seem to me they didn't have a chairman.

Q. Isn't it a fact that Mr. Barnum was not even the chief executive officer of McCall Ferry Power Company? A. That is a fact, yes. Mr. Barnum was sitting in the position where he could really control the thing. He was secretary and treasurer.

Q. Isn't it a fact Barnum did not even lead the [7600] discussion.

Strike that, please.

Mr. Gunn, aren't you mixed up as to the Barnum who was secretary and treasurer of McCall Ferry? A. Yes, sir, who as I recall it was Mr. William M. Barnum's son. I was referring to Mr. William H. Barnum, who is Mr. William M. Barnum's son as I recall it.

Q. Mr. Gunn, isn't it a fact that the minutes of McCall Ferry executive committee indicate Barnum did not even lead the discussions of the committee? A. I can't say that. As I said, if you want to go into the details of those committee minutes I will have to go back and read them because I have not seen them in eight years.

Q. Isn't it a fact that Mr. Dimock led the discussions of the executive committee? A. I can't answer that. As I said, I just do not recall.

**TRIAL EXAMINER:** Would you refer to page 44 of Exhibit 26? How many of the permanent directors do you identify as Fisk's representatives?

**THE WITNESS:** It is impossible to make the identification, Mr. Examiner. That is the attempt to which I referred this morning when I spoke of attempting to identify certain groups, or that this was a joint enterprise. I attempted to [7601] go through and classify this permanent board of directors. I always wound up with several directors and I couldn't tell who they represented. For example, A. C. Bedford was one of them who, as I remember it, was a high official of Standard Oil Company at that time.

E. J. Berwin was another who, as I recall it, was a rather important coal operator in Pennsylvania.

There are several others on there. I don't know who they were or what they were so it was impossible for me to classify them.

[7602] By MR. HALL:

Q. Mr. Gunn, isn't it a fact Mr. Bedford was the representative of Mr. C. M. Pratt? A. A representative of who?

Q. Mr. C. M. Pratt? A. I don't know. That is just exactly what my difficulty was. I couldn't classify them. As a matter of fact, I don't recall who Mr. Pratt was.

Q. Wasn't Mr. Pratt one of the large subscribers to the McCall Ferry bonds? A. He may have been. I recall the name. But the Examiner was asking me which of these people represented Fisk. That is where I got into difficulty. I said I didn't know.

Q. Isn't it a fact, Mr. Gunn, that during your study you always ended up with more than one group represented on the board of directors? A. I suppose I did, yes. I wound up with some people that I could certainly identify with Fisk, that being William M. Barnum and Pliny Fisk. I wound up with Cary T. Hutchinson and George B. Willson and H. F. Dimock, whom I could certainly identify with Hutchinson.

There were others in there. The rest of them, a considerable number of the rest of them, I didn't know who they were identified with.

[7603] Q. How did you identify Coffin? A. I didn't know what to do with him.

Q. How about Gardiner M. Lane? A. When I said I didn't know what to do with Coffin, I meant I didn't know what to do with him as respects classifying him on a board of directors. I knew he was president of General Electric Company. I knew Gardiner M. Lane was a member of the firm of Lee, Higginson.

Q. How did you classify Mr. Lane on the board? A. Just that way, as representing Lee, Higginson and Company.

TRIAL EXAMINER: You have your notes there. Haven't you covered this before more or less?

MR. HALL: Not in this way and not in this connection.

TRIAL EXAMINER: He classified Berwin, Beyer and Hope as dummies. Didn't he cover them all?

**MR. KING:** He did, Mr. Examiner, two or three days ago.

**MR. HALL:** The question is now, dummies for whom?

**TRIAL EXAMINER:** Wherever he testified as to the fact they were dummies, he testified on that matter.

**MR. HALL:** I don't recall he mentioned on whose behalf they were dummies.

**TRIAL EXAMINER:** We had better suspend questioning on this point until we can review the matter. I hesitate to have the whole matter reopened without doing that.

[7604] **MR. HALL:** Mr. Examiner, if the record does show any thing it shows a general statement heretofore that all of these fellows were under the thumb of Fisk.

**THE WITNESS:** Yes.

**MR. GOLDBERG:** But we now have the witness saying that prior to his statement from Fisk he had always ended up with the board of directors being classified as associated with one interest or another interest.

Now, the record does not show until this moment with what interests he was classifying these various directors. That is what we are trying to find out by dealing with page 44.

For example, he told us he was able to classify Dimock and Hutchinson together. He didn't know what or that he put Barnum with the Fisk firm. Certainly Pliny Fisk himself was put in with the Fisk firm. We are trying to find out what he did with the rest of them. If he didn't know we would like to know.

**TRIAL EXAMINER:** Let's find out what he said before on the subject.

**MR. KING:** 6856, 6857, 6858 and 6859.

[7605] By MR. HALL:

Q. Did you classify Beyer with the Hutchinson interests? A. I don't know just how to classify Beyer at this stage of the game. Beyer previously represented Hutchinson, but he continued on as counsel for McCall Ferry Power Company, I believe. I don't know just how to classify him.

Q. Do you think the fact Beyer continued as counsel for McCall Ferry would warrant your not classifying him with Hutchinson? A. It very certainly would, because I certainly imagine he was working with the sanction of Simpson, Thacher and Bartlett, being a lawyer.

Q. What do you mean by "sanction of Simpson, Thacher and [7606] Bartlett"? A. I imagine Simpson, Thacher and Bartlett could have gotten another lawyer if they wanted.

However, this is all sheer speculation.

TRIAL EXAMINER: Let's not speculate.

THE WITNESS: The difficulty is that I just can't classify them.

By MR. HALL:

Q. Were you able to classify Parsons? A. No, I could not. Parsons is an engineer and I suppose he represented whoever controlled the project at the time he was working on it.

Q. How about Mr. Griscom? A. Griscom was a member of the firm of Bertron, Storrs and Griscom.

Q. How did you classify Bertron and Griscom? Were you able to do so?

THE WITNESS: What do you mean by "classify them"?

By MR. HALL:

Q. What interest did they represent? A. I thought they represented themselves. In the end they turned out to be joint bankers with Fisk, so I certainly assume they represented themselves.

[7607] Q. Who is J. J. Hope? A. I don't know.

Q. Who is W. M. Canby? A. I don't know that.

Q. Do you know whether or not Hope and Canby were from Philadelphia? A. No, I really can't say; probably I knew at one time but I don't recall now.

Q. Canby was a banker, wasn't he? A. I really don't know.

Q. Mr. Gunn, isn't it a fact that the entire key personnel of the McCall Ferry Power Company was appointed by the board of directors or the executive committee of the board at times with the advice of the board of advisory engineers? A. Those selections were passed upon by the board of directors and executive committee, as I recall it. However, it was my understanding from Mr. Fisk that Mr. Fisk controlled the firm and I therefore assumed he had veto power over the board and the executive committee. At least he so states in his affidavit, that his firm, that is he or Barnum, he in general acting through Barnum, made those selections.

[7608] Q. Selection of officers and key personnel is a customary function of the board of directors, is it not? A. Are you speaking of customary function at the present time or in 1905?

Q. 1905 as well as of the present time. A. I wouldn't say so. I would say selections back in those days were made by the persons who controlled the enterprise financially. I would extend that to include the board of directors and the executive committee, that is that selection.

Q. Even if we assume, as you do, that Fisk controlled McCall Ferry, the fact remains that the personnel was selected by the directors in their capacity as directors. Isn't that so? A. I don't think so, not as I understand the word "select," Mr. Hall. They passed upon the selections of these individuals that you refer to, but so long as Fisk had the right to accept or reject these individuals as an ultimate action it seems to me that it is he who in fact made the selection.

Q. McCall Ferry had its own officers, of course?

THE WITNESS: Oh, yes. Surely, I suppose it had to have them.

[7609] By MR. HALL:

Q. And the management of the company was in their hands? A. Except as Fisk managed it I suppose it was in their hands.

Q. Are you saying they had to keep clearing with Fisk? A. On the important items I most assuredly assume they did.

Q. You assume that? A. I assume it because of the statements Mr. Fisk and Mr. Hutchinson made in their affidavits. It is not so much an assumption as it is a conclusion.

Q. But you can not point to anything which cleared with the Fisk firm, right?

MR. KING: May we have that question again?

(Question read.)

By MR. HALL:

Q. I mean that the officers cleared with the Fisk firm?

MR. KING: Officers of the company?

MR. HALL: Yes.

THE WITNESS: No, we don't have enough records so we can do that. If we had succeeded in finding the Fisk record we might have been able to do that, although one of the officers of the McCall Ferry Power Company, and an important officer, if I may say, he being secretary and treasurer, was William H. [7610] Barnum. What he may have cleared with his father I have no means of knowing and I have no means of proving.

By MR. HALL:

Q. Isn't it a fact that Penn Water now has most of the correspondence relating to the activities of McCall

Ferry Power Company? A. Ordinary routine activities, yes, but activities of the character we are discussing I don't think we would necessarily ever have found in the files of McCall Ferry Power Company.

May I have the question and answer, please?

(Question and answer read.)

THE WITNESS: That is just for the reason we have been discussing, that Fisk did dominate the affairs of McCall Ferry Power Company.

By MR. HALL:

Q. Doesn't Penn Water now have the correspondence of McCall Ferry Power Company classified by officers of that company? A. Some of it I think we do have, but I have no means of knowing whether it is complete or not. I do know that it is the custom of companies to have a large number of files. Whether we have all the files or not I don't know. As a matter of fact, as I recall from my study of them there was reason to believe we didn't have them all.

[7611] Q. But the correspondence Penn Water now has of McCall Ferry Power Company is not limited to routine correspondence. Isn't that so? A. No, it is not strictly limited to that but there is no reason for assuming from a review of what we do have that that is complete.

Q. Do you know how many meetings the executive committee of McCall Ferry Power Company had? A. I don't recall. The minute books will show how many there were.

Q. My information is that there was a total of 109 meetings of the executive committee of that company.

Do you know Dimock attended all of those meetings? A. No, I don't know that he did, but I certainly would expect that he would attend most of them. In other words, I would expect him to have the lowest number of absenteess.

Q. Why? A. Because he was president of the company and he had the detailed information with which it

might be necessary to answer questions which would come up before the executive committee.

Q. Isn't it the function of the officers of the company to manage the company? A. You mean at the present time or in 1905?

Q. 1905 as well as the present time. [7612] A. Not in the sense we have been discussing management it isn't, and particularly during the construction period.

Q. Are you saying that it was the function of the officers to manage the company but that the Fisk firm exercised that function for them? - A. No, sir, that is not what I am saying. I am saying that the officers of the company performed certain managerial functions and that the Fisk firm performed the rest of them. Those which the Fisk firm performed were the important functions.

Q. As a result of your study, Mr. Gunn, don't you know that Dimock was often appointed to investigate particular management functions? A. I suppose he was. I don't recall any particular act that would lie in the field that you mentioned.

Q. Don't you know that Mr. Dimock led the discussions at the executive committee meetings? A. No, but I can very well imagine that he being the man who was closest to the construction progress of the project might have done most of the talking.

Q. And Mr. Dimock submitted reports from time to time, didn't he? A. I imagine he did. I suspect he submitted them rather often to Fisk.

[7613] Q. How about the executive committee? A. He may have submitted them to them. That may have been the same thing.

Q. You don't have to imagine Mr. Dimock submitted reports to the executive committee—it is in the records, isn't it? A. I don't know. As I stated I have not read the executive committee minutes for eight years. I don't recall what is in them.

Q. But with respect to the submission of reports by Dimock to Fisk you are unable to substantiate that, right?

A. That is right. Of course I can not substantiate it. I can not substantiate any of this. The whole thing is speculation.

**TRIAL EXAMINER:** Let's stop speculation and say you don't know.

[7614] By MR. HALL:

Q. You know, do you not, that Dimock actively exercised his duties as chief executive officer of McCall Ferry and participated in the management of the company? A: I think he did to the extent he was permitted.

**TRIAL EXAMINER:** Do you know whether or not he did?

**THE WITNESS:** It is impossible to answer that question, Mr. Examiner, because the Commission counsel has not described what he means by management functions. I think it is undoubtedly true that Mr. Dimock did perform certain management functions. I think it is also undoubtedly true that Fisk's firm did.

**TRIAL EXAMINER:** If counsel had specified would you have been able to answer?

**THE WITNESS:** I probably could have gone back to the correspondence and to the minutes of various meetings and ascertained an answer to his question.

**TRIAL EXAMINER:** From recollection or actually having knowledge?

**THE WITNESS:** I would have to do so. I couldn't do it from recollection.

By MR. HALL:

Q. Are you saying Mr. Dimock did not exercise all of the functions required of the president of the McCall Ferry Power Company?

[7615] MR. KING: If your Honor please, I object to that question because I think this is pure argument with the witness.

TRIAL EXAMINER: Can you answer the question?

Is this question on any other basis than the other questions which have been addressed to you, that is you would have to refer to the minutes?

THE WITNESS: I would have to do more than that. I would have to know all the functions of the president of McCall Ferry Power Company in 1905. I don't know that.

TRIAL EXAMINER: Very well.

By MR. HALL:

Q. Aren't the duties of the president of McCall Ferry Power Company set forth in the articles of incorporation?

A. In a general way, I suppose.

Q. And Mr. Dimock performed those duties as president of the company. Right? A. Some of them, I suppose.

TRIAL EXAMINER: What was that answer, please?

(Answer read.)

TRIAL EXAMINER: If you can't answer why don't you simply say so. I don't want supposition in the record.

THE WITNESS: The answer, then, is that I don't know.

[7616] By MR. HALL:

Q. Can you point to any matters that Mr. Barnum was instructed to investigate?

MR. KING: By whom, Mr. Hall—anybody?

MR. HALL: By the executive committee of McCall Ferry Power Company or the board of directors.

THE WITNESS: Not offhand I certainly can't. As I said I have not read those minutes for eight years and I don't have them in mind now.

By MR. HALL:

Q. Do you know of any matters Mr. Barnum did investigate? A. No, I have not read the minutes lately.

Q. Do you know of any matters Mr. Barnum introduced at any of the executive committee meetings?

MR. KING: If your Honor please, I object to that. The witness already answered that.

TRIAL EXAMINER: Objection overruled.

\* \* \*

THE WITNESS: No, and for the reason I have not recently read the minutes.

By MR. HALL:

Q. Mr. Barnum was not even an officer of McCall Ferry Power Company—right? [7617] A. That appears to be correct.

Q. Mr. Hutchinson was chief engineer of McCall Ferry Power Company, isn't that so? A. Yes, sir.

Q. What were his duties as chief engineer? A. I suppose they were the same as any normal chief engineer's of any company which is under construction.

Q. I want to know if you know what Mr. Hutchinson's duties were, Mr. Gunn? A. General supervision over the construction contracts, general supervision over design, supervision over the quality, quantity and the sequence of construction. He had the right to make technical decisions within certain limits, I believe, subject to the advisory board of engineers. He was a member of the board of advisory engineers. He entered into negotiations for the relocation of the railroad and for power contracts. Surveys for potential power markets were made under his supervision. He made reports from time to time to the management of the company, and I suppose he selected the engineering personnel working under his direction on the construction of the project and for purposes of inspection of the construction work expediting the delivery of equipment, and other similar matters.

Q. What was Mr. Hutchinson's salary for what he did? A. I don't recall.

[7618] Q. Wasn't it fourteen thousand dollars a year?  
A. It may have been. I just don't recall.

Q. Will you check that, Mr. Gunn? A. Yes, sir.

Q. What do you mean by the general supervision performed by Mr. Hutchinson? A. In connection with what?

TRIAL EXAMINER: Why do you ask the witness to check that kind of a thing? If it is a part of your case and the Staff has had the files of the company and some member of the Staff knows, why can't you put that information in?

\* \* \*

[7619] Mr. GOLDBERG: We submit that the mere fact we may put on certain evidence, or the fact we had files available to us does not preclude a proper cross-examination. Where this witness comes in with claims as to management services and the like we are entitled to find out what goes into his consideration and what he did and what he didn't consider.

TRIAL EXAMINER: You are not entitled to ask the witness to come in and present a fact which he cannot remember. That is entirely voluntary on his part.

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[7620] TRIAL EXAMINER: I have observed there have been an unnecessary number of requests made for the witnesses to check and bring in additional data, particularly when the information apparently is in the possession of Commission Staff.

\* \* \*

[7621] By Mr. HALL:

Q. What did you mean, Mr. Gunn, when you stated that Mr. Hutchinson had general supervision over construction contracts? A. That it was his responsibility to inspect the work, make certain that the work was done in accordance with specifications, make certain that the quantities of work claimed by the contractor were correct,

that the plan submitted by the contractor for doing the work was efficient and would result in sound construction and at reasonable cost, that the progress the various contractors were making towards completion was adequate, and other such matters as [7622] that.

Q. When you referred to the fact Mr. Hutchinson had general supervision over design you referred to the same sort of thing? A. Yes, same general sort of thing, just what would be the ordinary responsibilities of supervision of a chief engineer.

Q. What were his duties in connection with the quantity and quality and so forth of the work? A. Just what I have described. I just mentioned that as one of the duties in connection with the construction.

Q. What was Mr. Hutchinson's limit to his right to make technical decisions? A. His rights were subject and subordinate to the board of advisory engineers, as I understand it. I should say they were subject to the veto of the board of advisory engineers, at least.

Q. And as chief engineer I take it that Mr. Hutchinson had primary overall responsibility for the entire construction program.

THE WITNESS: May I have that question?

(Question read.)

MR. KING: If your Honor please, I object to that question. I think the witness has given the facts in connection with Mr. Hutchinson's responsibility. This question [7623] is argumentative and attempts to summarize those facts.

MR. HALL: This question relates to the chief responsibility, Mr. Examiner.

TRIAL EXAMINER: Objection is overruled.

THE WITNESS: I don't know what you mean by "primary overall responsibility."

By Mr. HALL:

Q. Who had responsibility superior to that which rested on Mr. Hutchinson's shoulders? A. The board of supervisory engineers, the executive committee, the board of directors, and Fisk, and in some instances Mr. Cooper.

Q. Although Mr. Hutchinson was not a member he did attend meetings of the executive committee and participated in their discussions. Isn't that so? A. He may have. I don't recall.

Q. Didn't Hutchinson present frequent reports and recommendations to the executive committee and to Mr. Dimock? A. I don't recall, but I suppose he did. It would be expected that he would.

Q. And those reports and recommendations would be dealing with construction of the project, negotiations for power contracts, relocation of railroads, and so forth? A. Yes, I think in general that would be their scope.

Q. Wasn't Mr. Hutchinson often selected to investigate [7624] specific management problems? A. What do you classify as a management problem, Mr. Hall?

Q. Any management problem with which the company was confronted, such as power contracts or relocation of the railroad? A. He certainly had certain duties with respect to those. Whether he had ultimate responsibility or not is something else.

Q. Wasn't Mr. Hutchinson often selected to investigate such problems? A. Certain aspects of them, yes.

Q. Did you know that Mr. Hutchinson attended more executive committee meetings than Barnum did? A. No, I didn't know it. I may have at one time.

Q. Who was Hugh L. Cooper? A. He was the contractor for the structural hydraulic portions of the McCall Ferry project and a prominent construction engineer.

Q. Mr. Hutchinson, with the assistance of Mr. Cooper, negotiated the contracts for the purchase of the turbines and generators. Isn't that so? A. They both participated.

Q. Who was J. W. Kirkland?

[7625] THE WITNESS: May I have the question, please?  
(Question read.)

THE WITNESS: He was an engineer who became vice-president of McCall Ferry Power Company in 1906.

By MR. HALL:

Q. Going back to my previous question just for the moment, Mr. Gunn, isn't it a fact that Hutchinson and Cooper actually negotiated the contract for the purchase of the turbines and generators? A. I don't think you can necessarily draw that conclusion.

Q. Why not? A. Because they undoubtedly negotiated the contracts as the contracts related to the size of the units, characteristics of the units, and the details of design. But who placed the contract or directed where the contract should be placed may very well have been another matter beyond any one of themselves' control.

Q. Who did that? A. I don't know. I assume Fisk did, with Mr. Coffin's help.

TRIAL EXAMINER: You need not assume. If you don't know you don't know.

By MR. HALL:

Q. What were the duties of Mr. Kirkland? [7626]  
A. I don't recall offhand. Shall I look up his title?

Q. If you will. Was he vice president and general manager? A. Yes, I already mentioned that.

Q. To whom did Mr. Kirkland report? A. I don't know.

Q. Do you know what Mr. Kirkland's salary was? A. No. I do not recall offhand.

Q. Would it help you any if I said it was \$7500 a year? A. Well, I accept your figure if it is \$7500 a year.

Q. Wasn't Mr. Kirkland active in the management of the McCall Ferry Power Company? A. Yes, I believe he was active. Whether he devoted his whole time to McCall Ferry Power Company matters I don't know.

Q. Mr. Hutchinson, with the assistance of Mr. Kirkland, also undertook the study of power markets and the negotiation of power contracts resulting in the signing of the power contract with Consolidated Gas Electric Light and Power Company of Baltimore and United Railways and Electric Company. Isn't that so? A. May I have that question, please?

(Question read.)

THE WITNESS: It is my recollection that they both participated. As to who was assisting who, however, I don't know.

[7627] By MR. HALL:

Q. Do you know of anyone else who participated in the signing of those contracts? A. Signing or negotiation?

Q. Both. A. May I have the question, please?

(Question read.)

THE WITNESS: It seems to me I found some evidence in the file that Boyd Ehle did.

By MR. HALL:

Q. He was one of Hutchinson's assistants, right? A. Yes. As for who signed the contracts I think we can find that out by referring to the contracts. I suppose it was the appropriate officers of McCall Ferry Power Company.

May I have the question, please?

(Question read.)

THE WITNESS: The contract between Consolidated [Gas] Electric Light and Power Company of Baltimore, which is Part 36 of Exhibit 27 was signed by Mr. J. W. Kirkland, Vice President, and Mr. Harold Pender.

I notice on that agreement on each page of it in the lower left-hand corner J. W. Kirkland's initials, and the initials of someone else whom I do not recognize.

Referring now to the contract of the United Railways [7628] and Electric Company of Baltimore dated June 28, 1907, that contract was signed by Henry F. Dimock as President of McCall Ferry Power Company and Harold Pender, Secretary of the McCall Ferry Power Company.

By MR. HALL:

Q. Mr. Hutchinson had as his assistants Boyd Ehle and R. H. Anderson as resident engineer and assistant resident engineer respectively stationed at the site of the project and J. W. Young, assistant engineer assisting him in New York. Isn't that so? A. All of the parties that you mentioned were assisting Hutchinson. As to their location, I am sure Ehle and Anderson were at the project. I don't know just how much time J. W. Young spent at the project.

Q. What were the duties of Ehle and Anderson? A. Assisting Hutchinson.

Q. In engineering matters? A. Yes. I suppose at least Ehle's duties were related to most of Hutchinson's responsibility that was to be discharged at the project.

Q. They were assisting Hutchinson in the supervision of the project? A. Yes.

Q. Mr. Hutchinson, Mr. Dimock and Mr. Cooper negotiated railroad relocation contract with Pennsylvania Railroad. [7629] Isn't that so? A. As I recall it they all participated in it, as well as Thomas Newhall. I don't know who else may have participated in it. As I understand the story the negotiations for that railroad relocation contract were rather difficult and several people participated in them.

Q. Were not all accounts for engineering and construction work subject to the approval of Hutchinson and all other accounts subject to the approval of the president, vice president or executive committee of McCall Ferry?

A. May I have that question, please?

(Question read.)